ORIGINAL JURISDICTION IN CRIMINAL CASES *

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Jurisdiction is the power and authority of a court, tribunal or body to take cognizance of, hear, try and decide a litigation, petition or motion. Such an awesome power is in our legal system created, defined, prescribed, apportioned, conferred and delimited by the Constitution[1] and by Congress; never by the Supreme Court. Thus, in *Malaloan v. CA*[2] which involves a search warrant issued by a Kalookan City Regional Trial Court (RTC) for firearms to be searched in Quezon City, the Supreme Court said that with reference to the authority conferred by BP 129[3] on the Supreme Court to define the territory within which each trial court shall exercise jurisdiction, the circulars it had issued pursuant thereto should not be construed as conferring upon the Supreme Court any power to confer jurisdiction, but merely an authority to delimit the administrative area within which each branch of the trial court may exercise its jurisdiction.

JURISDICTION AND THE EXERCISE OF JURISDICTION

Jurisdiction, which is substantive in nature, therefor, should not be confused with, and rather, must be distinguished from, the exercise of jurisdiction, which is procedural. In the 1987 Constitution, the power to promulgate rules concerning pleading, practice and procedure in all courts has been conferred upon the Supreme Court. The rules and decisions of the Supreme Court therefore that may have a bearing on the issue of jurisdiction can only be conceived of and read

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[1] CONST., art. VIII, sec. 2.

[2] G.R. No. 104879, May 6, 1994, 232 S.C.R.A. 249 (1994).

[3] Batas Pambansa Blg. 129 (1981).

as confined in its rule-making power, that is, the exercise by a trial court of its authority, rather than the substantive power of the court to assume jurisdiction over a case.

Such distinction between jurisdiction and its exercise is important to bear in mind because, among others, the mode of appellate recourse is directly affected by such distinction.

The following are cases decided in recent months wherein the Supreme Court ruled that what was involved is the exercise of jurisdiction:

> (a) The discharge of a state witness which includes that of not interfering with the pre-determination by the Department of Justice (DOJ) as to who should be a person who should not be charged under the Witness and Victim's Protection Act[4]. The case of *Webb v. de Leon*[5] where this matter was brought to the Supreme Court on certiorari because it involved an alleged error in the exercise of jurisdiction, rather than an error of judgment;
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> (b) Refusal to grant bail. In *Galvez v. CA*[6], it was held that the writ of habeas corpus is not the proper remedy to question a denial of bail. The proper procedure is to invoke the trial court's jurisdiction, apply for bail, and if denied, go to the Court of Appeals, except where a case involves a very special circumstance as held in *Enrile v. Salazar*.[7]

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[4] Rep. Act. No. 6981 (1991).

[5] G.R. No. 121234, August 23, 1995, 247 S.C.R.A. 652 (1995).

[6] G.R. No. 114046, October 24, 1994, 237 S.C.R.A. 685 (1994).

[7] G.R. No. 92163, June 5, 1990, 186 S.C.R.A. 217 (1990). (*Editors' note:* In *Enrile v. Salazar*, the Supreme Court pointed out that it is only after denial of relief by the trial court or by the Court of Appeals that the review jurisdiction of the Supreme Court should be invoked. Here, the petitioner bypassed the trial court and the CA and went directly to the Supreme Court. Despite this pronouncement, however, the Supreme Court still granted the relief sought and

> (c) Refusal of the court to quash an information for lack or deficiency in the conduct of preliminary investigation. The proper remedy is to ask the court to order one to be made or to require its completion. Should the accused, however, want to quash the information for lack of a preliminary investigation, he may do so but solely on that ground, otherwise he is deemed to have waived his objection to the court's jurisdiction over his person.[8]

With reference to the term "jurisdiction over the person of the accused," which is waivable, as opposed to "jurisdiction over the subject matter" which is not, unless there are again special circumstances involved, the filing of a motion for bail or reduction thereof, the posting of bail recommended by the prosecutor or fixed by the court, the filing of a motion to quash or other pleadings, the voluntary surrender of an accused or his arrest, work as a submission of one's person to the jurisdiction of the court and cure any irregularity attendant to one's arrest or in the preliminary investigation.

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remanded the case to the trial court ordering the respondent judge to fix the amount of bail.

In justifying its action, the Supreme Court pointed out the special circumstance surrounding this case when it said that: "not only because popular interest seems focused on the outcome of the present petition, but also because to wash the Court's hand off it on jurisdictional grounds would only compound the delay that it has already gone through, the Court now decides the same on the merits. But in so doing the Court cannot express too strongly the view that said petition interdicted the ordered and orderly progression of proceedings that should have started with the trial court and reached this court only if the relief applied for was denied by the former, and, in a proper case, by the Court of Appeals on review." The Supreme Court made it clear that "hereafter the Court will no longer countenance, but will give short shrift to, pleas like the present, that clearly short circuit the judicial process and burden it with the resolution of issues properly within the original competence of the trial courts.")

[8] Sanchez v. Demetriou, G.R. Nos. 111771-77, November 29, 1993, 227 S.C.R.A. 627 (1993).

In *Santiago v. Vasquez*[9], the accused questioned the authority of the Sandiganbayan to issue a hold-departure order as she never voluntarily surrendered nor was she ever arrested by court warrant. The Supreme Court held that Santiago is estopped from disavowing the court's jurisdiction over her person because she had posted a cash bond although the Sandiganbayan did not insist that she should personally come to court in view of her physical condition at the time.

Another important phrase used in connection with jurisdiction is the term "jurisdiction over the subject matter." This term refers to the power vested in a court or grade of court to hear and decide cases of the class to which the proceedings belong. Such subject matter jurisdiction could be general, in which case it extends to all controversies which by the Constitution or statute may be brought before a court; or it could be special or limited, which means that the tribunal's jurisdiction is confined only to particular cases or may be exercised only under the circumstances prescribed by the enabling legislation or fundamental law.

Jurisdiction over the subject matter could also be original which means jurisdiction conferred upon or inherent in a court in the first instance; or it could be exclusive, in which case jurisdiction is confined to a particular court or grade of courts to the exclusion of all others; and it could be concurrent, which exists when anyone of several distinct courts has the power to hear and render judgment in a particular case or class of controversies.

In the Philippine legal system, Regional Trial Courts (RTC) and Metropolitan Trial Courts (MTC), Municipal Circuit Trial Courts (MCTC) and Shari'a Circuit Courts are courts of general and original jurisdiction. They also exercise exclusive jurisdiction in criminal cases. Incidentally, the Shari'a District Courts have no original jurisdiction in criminal cases, but like the RTC, which has appellate jurisdiction over MTCs and MCTCs, they have appellate jurisdiction over the Shari'a Circuit Courts. Congress has, for the present, done away with the system of concurrent jurisdiction which used to exist before

[9] G.R. No. 99289-90, January 27, 1993, 217 S.C.R.A. 633 (1993).

between the then Courts of First Instance (CFI) and the City Courts in certain criminal cases.

The Sandiganbayan is a perfect example of a court of special and limited jurisdiction in criminal cases. Make no mistake, however, in thinking that it is a special court. As a court, it is just like the RTCs, a regular civil trial court, but unlike the RTCs, it has a distinct constitutional mandate[10]. As such, the Sandiganbayan cannot review judgments of the Court of Appeals to which it is inferior[11] nor can the Sandiganbayan issue extraordinary writs, like injunction, etc., unless expressly so clothed by law[12]. Republic Act 7975, "An Act to strengthen the functional and structural organization of the Sandiganbayan," which was approved on March 30, 1995, has already clothed the Sandiganbayan with the power to issue extraordinary writs.

DETERMINATION OF JURISDICTION

Attention must be had to the problem of: in which kind or grade of court to file a criminal information; and, corollarily, to the problem of: what is the consequence of or procedure to be followed where the criminal complaint or information had been filed in the wrong court.

1. It is basic that venue in criminal cases is jurisdictional. Therefore, the case must be filed in the court which has territorial jurisdiction over the crime or offense, and in the case of a continuing crime, where any of its constitutive or essential elements took place. In passing, it is worthy to mention that prior referral to the Katarungang Pambarangay has now been held to be non-jurisdictional, albeit, mandatory. Nonetheless, being mandatory, in a case of Grave Threats, for example, where the only possible penalty is less than a year of imprisonment or a fine of P3,000.00, the criminal action is still subject

[10] Garcia v. Sandiganbayan , G.R. No. 114135, October 7, 1994, 237 S.C.R.A. 552 (1994); Republic v. Asuncion, G.R. No. 108208, March 11, 1994, 231 S.C.R.A. 211 (1994).

[11] Pajaro v. Sandiganbayan, G.R. No. 82001, April 15, 1988, 160 S.C.R.A. 763 (1988).

[12] Garcia, *supra*.

to dismissal on timely motion for lack of such prior recourse, not on the ground of lack of jurisdiction, but for the reason that the charge failed to state a cause of action[13].

It has similarly been held, in connection with the prosecution of private crimes or crimes which cannot be prosecuted de oficio, that the signature of the offended private party is no longer jurisdictional, but merely a condition sine qua non for the exercise by the fiscal of his power to prosecute such kind of crime[14]. It is worth mentioning *en passant*, that the doctrine of *parens patriae* under Rule 110, sec. 5, which vests parents, grandparents, guardians and the State with the right to initiate a criminal prosecution when the offended party dies or becomes incapacitated, does not cover the crimes of adultery and concubinage. Only the spouse and no other may initiate the action[15].

2. The time of the institution of the action, not the day of the commission of the offense, determines which court has jurisdiction.[16] Corollarily, the averments in the complaint or information delineate jurisdiction[17].

3. The penalty prescribed by the statute over the offense charged, not the penalty or sentence that may ultimately be imposed by the sentencing court, even if less and does not fall under its jurisdiction, determines which grade of court is authorized to take cognizance of, hear and decide the case[18].

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[13] Wingarts v. Mejia, A.M. No. MTJ-94-1012, March 20, 1995, 242 S.C.R.A. 436 (1995); Felizardo v. CA, G.R. No. 112050, June 15, 1994, 233 S.C.R.A. 220 (1994).

[14] People v. Tanada, G.R. No. 32215, October 17, 1988, 166 S.C.R.A. 360 (1988); RULES OF COURT, Rule 110, sec. 5.

[15] Pilapil v. Ibay-Somera, G.R. No. 80116, June 30, 1989, 174 S.C.R.A. 653 (1989).

[16] Dela Cruz v. Moya, G.R. No. 65192, April 27, 1988, 160 S.C.R.A. 838 (1988).

[17] Buaya v. Polo, G.R. No. 75079, January 26, 1989, 169 S.C.R.A. 471 (1989).

[18] *See* People v. Alfeche, G.R. No. 102070, July 23, 1992, 211 S.C.R.A. 770 (1992).

In *People v. Simon*[19], the Supreme Court held that the imposable penalty for pushing marijuana below 250 grams shall be prision correccional; from 250 to 499 grams, *prision mayor*, and 500 to 750 grams, reclusion temporal. In *People v. Manalo*[20], the Second Division of the Court took note of the ruling in the Simon case, but unlike in the Simon case, the Second Division held that the accused is entitled to the benefits of the Indeterminate Sentence Law (ISL). The Second Division sentenced the accused to a minimum of six (6) months of arresto mayor. In *People v. Ganguso*[21], the First Division also applied the ISL but, unlike the Second Division, the First Division held that where there are no mitigating and aggravating circumstances the minimum penalty shall be *arresto mayor* medium, and thus, sentenced the accused to a minimum of three (3) months of *arresto mayor*, much lighter than the six months sentence imposed in the Manalo case.

It is important to remember that it is either the Constitution, or Congress that defines and confers jurisdiction, never the Supreme Court whose power encompasses only that of issuing rules for the exercise by courts of their statutorily defined jurisdiction.

Ours is a government of separation of powers and checks and balances. Invasion of powers belonging to a branch is jealously guarded; indeed, defined as a felony by our Revised Penal Code.

Hence, when the Supreme Court held that the penalty of the sale or possession of small grams of marijuana or shabu shall be prision correccional, the Supreme Court decision could not and must not be read as defining or conferring jurisdiction upon trial courts. That decision must be interpreted and construed as merely prescribing a rule on how a trial court shall exercise its statutorily-conferred authority in imposing a sentence upon an accused convicted of selling or possessing drugs on a small scale. Indeed, it must be assumed that the Supreme Court knows the very basic precept that it cannot confer jurisdiction, and that in fixing where the information shall be filed

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[19] G.R. No. 93028, July 29, 1994, 234 S.C.R.A. 555 (1994), *en banc.*
[20] G.R. No. 107623, June 30, 1995, 245 S.C.R.A. 494 (1995).
[21] G.R. No. 115430, November 23, 1995, 250 S.C.R.A. 268 (1995).

between courts of general jurisdiction, jurisdiction is determined by the penalty prescribed by the statute for the offense charged even if the accused may later be sentenced to a lesser penalty outside the sentencing court's jurisdiction, as for example, in the case of a charge of Attempted Murder which is within the jurisdiction of the RTC, and should be filed with the RTC even if the accused is later on found guilty only of Attempted Homicide and sentenced to *prision correccional.*

In an unpublished Resolution of the Second Division of the Supreme Court in the case *Gulhoran and Bobares v. Hon. Escano, Jr.*[22], the Resolution said that: "the imposable penalties applicable to the subject cases are within the range of prision correccional, a penalty not exceeding six (6) years, thus falling within the exclusive original jurisdiction of the MTC. It follows that the RTC has no jurisdiction to take cognizance of the charges against the petitioners."

It appears that, someone at the Second Division forgot the basic rules discussed above. But an even more telling case of forgetfulness or, perhaps, ill-attention, involves the fact that sec. 39 of Republic Act No. 6425(1972) as amended by PD No. 44 (1972), otherwise known as the Dangerous Drugs Act, provides the following:

> "Sec. 39. Jurisdiction. The Court of First Instance [23], Circuit Criminal Court, and Juvenile and Domestic Relations Court, shall have *concurrent original jurisdiction* over all cases involving offenses punishable under this Act. x x x" (emphasis supplied).

Furthermore, the Resolution failed to correlate Rep. Act. 6425 with Rep. Act 7691, the Expanded Jurisdiction Act, which took effect on March 30, 1994. Section 2 thereof, which amended sec. 32 of B.P. 129, the Judiciary Reorganization Act of 1980, which reads:

> "Sec. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in*

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[22] G.R. No. 119135, Oct. 18, 1995.

[23] Now known as Regional Trial Court under Batas Pambansa Blg. 129 (1981).

> *Criminal Cases.* Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and the Sandiganbayan, the Metropolitan Trial Courts shall exercise:
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> (1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdictions; and
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> (2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof; Provided, however, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof."

The conclusion is therefore ineluctable that the Second Division committed a grim error in the unpublished case of *Gulhoran and Bobares v. Hon. Escano, Jr.*

4. Another problem area involved in subject matter jurisdiction is that where the court has no jurisdiction over the subject matter or nature of the action. The rule here is that the court may *motu proprio* dismiss the case and this absence of jurisdiction may be raised anytime even on appeal.

The rule on waiver of jurisdiction over the subject matter enunciated in *Tijam v. Sibonghanoy*[24] is an exception to this principle of non-waivability[25]. Injunction will lie to restrain a court from trying a case over which it has no jurisdiction[26].

5. Likewise, jurisdiction once acquired by a court remains with it until the case is fully terminated, regardless of whether in the meantime a law is passed placing jurisdiction in another tribunal,

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[24] G.R. No. 21450, April 15, 1968, 23 S.C.R.A. 29 (1968).
[25] De Leon v. CA, G.R. No. 96107, June 19, 1995, 245 S.C.R.A. 176 (1995).
[26] Mercado v. CA, G.R. No. 109036, July 5, 1995, 245 S.C.R.A. 598 (1995).

unless the law expressly provides the contrary.[27] As a consequence of this rule, it has been held to be improper for a law enforcement agency to investigate an accused without securing court permission in connection with an offense for which he has already been charged in court[28]. This rule on continuity of jurisdiction, however, should not be given an unyielding effect. The rule may not be applied where the jurisdiction of the first court which took cognizance of the case has already come to an end in a legal way as when the prosecution has filed a motion to withdraw information after arraignment and then filed an information for Murder which was re-raffled to another court as held in *Galvez v. CA*[29] This Galvez case also gave occasion for the pronouncement that jurisdiction is vested in the court, not in the Presiding Judge.

6. Relative to search warrants, the Supreme Court reminds everybody that an application for a search warrant is merely a process ancillary to the court's exercise of jurisdiction. It is not a criminal action that a court entertains pursuant to its original jurisdiction. A court may therefore issue a search warrant outside its territory[30]. Supreme Court Circular No. 19 (1987) dictates that the court which has territorial jurisdiction over the place to be searched must be given the first opportunity to issue a search warrant.

In *People v. Bans*[31], it was held that the sala where a subsequent criminal action was filed has the right to entertain a motion to quash a search warrant issued by a different court and to quash it if so warranted. *Nolasco v. Pano*[32] counseled that it is advisable to consolidate the motion and the criminal action in one sala.

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[27] Bueno Industrial and Dev. Corp. v. Enage, G.R. No. 31926, May 27, 1981, 104 S.C.R.A. 604 (1981).

[28] People v. Maqueda, G.R. No. 112983, March 22, 1995, 242 S.C.R.A. 589 (1995).

[29] G.R. No. 114046, October 24, 1994, 237 S.C.R.A. 685 (1994).

[30] Ilano v. CA, G.R. No. 109560, May 2, 1995, 244 S.C.R.A. 347 (1995), citing Malaloan v. CA, G.R. No. 104879, May 6, 1994, 232 S.C.R.A. 249 (1994).

[31] People v. Bans, G.R. No. 104147, December 8, 1994, 239 S.C.R.A. 54, (1994).

[32] G.R. No. 69803, October 8, 1985, 139 S.C.R.A. 152, at p. 164, (1985).

7. With reference to bail motions, an RTC judge would have no jurisdiction to set a petition for bail hearing, much less grant one where the fiscal failed to appear in such hearing because the charge against the accused is still pending preliminary investigation and no information has yet been filed[33].

In this connection, if the officer who signs the information is disqualified to be appointed as a prosecutor, the court acquires no jurisdiction to try the accused thereto[34].

Where, on the other hand, a complaint was filed with the MTC Judge for preliminary investigation, the judge should simply conduct one and transmit the record to the fiscal. He must never charge the accused in his court as if he were a public prosecutor, and assume jurisdiction over the case[35].

Sometimes, the prosecutor files several criminal cases and asks that trial be held jointly to save time. This is an approved procedure and the trial court can render a consolidated decision thereon. However, the court cannot convict the accused of a complex crime constitutive of the various felonies alleged in the separate informations and proved during the joint trial. For example, if one information is for double murder and another information is for carnapping, the accused cannot be convicted of robbery with double homicide. He has to be sentenced separately for murder and carnapping.[36] The reason given was the accused should not be deprived of his constitutional right to be informed of the nature and cause of the accusation against him.

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[33] Borinaga v. Tamin, A.M. No. RTJ 93-936, September 10, 1993, 226 S.C.R.A. 217 (1993).

[34] Galvez v. CA, *supra* note 29.

[35] Balagpo v. Judge Duquilla, A.M. No. MTJ 94-971, December 5, 1994, 238 S.C.R.A. 649 (1994).

[36] People v.Legaspi, G.R. Nos. 92167-68, July 14, 1995, 246 S.C.R.A. 206 (1995).

Likewise, when an accused has been charged of violating Sec. 4 of Rep. Act. 6425 (Dangerous Drugs Law), the court, after trial, cannot convict him of violating sections 4 and 15 of the same law [37]

Surprisingly, in the case of *People v. Barros*[38], where the accused used an unlicensed firearm in shooting his victim, the trial court, after a joint trial of the two separate informations filed, convicted the accused and sentenced him to suffer the penalty of *reclusion perpetua* for murder and another *reclusion perpetua* for possession and use of an unlicensed firearm with homicide. The Supreme Court convicted the accused only of one crime: illegal possession of firearm with homicide. According to Justice Regalado, in a separate opinion but agreed to by the Division, the violations committed by the accused cannot be considered *delito compuesto*, where a single act constitutes two or more grave felonies under Art. 48, Revised Penal Code (RPC), because a violation of PD 1866 does not constitute a felony. However, the acts can be considered as *delito complejo* under the second part of Art. 48, that is, "when an offense is a necessary means of committing the other." According to Justice Regalado, when a single composite crime is actually involved, it is palpable error to deal therewith and dispose thereof by segregated parts in a piecemeal fashion. Here, the court agreed with *People v. Tac-an*[39], that the principal crime should be illegal possession and the homicide only an incident thereof.

In another unique situation, the accused were charged in one information of kidnapping with murder. At the trial, it was shown that the killing was a mere afterthought; the Supreme Court convicted the accused of the separate crimes of kidnapping and murder[40]. An interesting situation which does not involve several informations, but several accused in one information wherein one pleaded guilty and the other two went to trial confronted the Supreme Court in *People v. Mendoza*[41]. The Supreme Court said that before acquitting one who

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[37] People v. Morico, G.R. No. 92660, July 14, 1995, 246 S.C.R.A. 219 (1995).
[38] G.R. Nos. 101107-08, June 27, 1995, 245 S.C.R.A. 332 (1995).
[39] G.R. Nos. 76338-39, February 26, 1990, 182 S.C.R.A. 601 (1990).
[40] People v. Enanoria, G.R. No. 92957, June 8, 1992, 209 S.C.R.A. 577 (1992).
[41] G.R. No. 80845, March 14, 1994, 231 S.C.R.A. 264 (1994).

pleaded guilty, the accused should first be allowed to withdraw his earlier plea and substitute it with a plea of not guilty on the ground that his plea of guilty was improvidently made.

COURTS OF SPECIAL AND LIMITED JURISDICTION

Some principles applicable to courts of general jurisdiction in determining which court grade or level has the authority to take cognizance of a criminal case are not, however, applicable to offenses which fall under courts of special and limited jurisdiction. The reason, simply put, it because their jurisdiction is special. One such court is the Sandiganbayan.

Sandiganbayan

Under Rep. Act. 7975, as approved on March 30, 1995, the Sandiganbayan exclusive original jurisdiction over three (3) clusters of cases:

1. The First Cluster

Over all violations of Rep. Act. 3019 (The Anti-Graft Law); Rep. Act. 1379 (The Law on Forfeiture of Unexplained Wealth); and Chapter II, sec.2, Title VI of the Revised Penal Code (Art. 210, Direct Bribery; Art. 211, Indirect Bribery; and Art. 212, Corruption of Public Officers); where one or more of the principal accused are officials occupying the following positions in the government, whether in permanent, acting or interim capacity, at the time of the commission of the offense.

A. 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[42], specifically include:

[42] Rep. Act. No. 6758 (1989).

a. Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers and other provincial department heads;

b. City mayors. vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads;

c. Officials of the diplomatic service occupying positions of consul and higher;

d. Philippines army and air force colonels, naval captains, and all officers of higher rank;

e. PNP chief superintendent and PNP officers of higher rank;

f. City and provincial prosecutors and their assistants, officials and prosecutors in the Office of the Ombudsman and special prosecutor;

g. Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;

B. Members of Congress and officials thereof classified as grade 27 and up under the Compensation and Position Classification Act of 1989;

C. Members of the Judiciary without prejudice to the provisions of the Constitution;

D. Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution;

E. All other national and local officials classified as grade 27 and higher under the Compensation and Position Classification Act of 1989.

Under the foregoing enumeration, the necessity of specifically alleging in the information the words "in relation to their office," has been dispensed with. This particular phrase has been the subject of several litigation. But now, under the foregoing enumeration,

Sandiganbayan jurisdiction is determined on the basis only of (a) the penal law violated; and (b) the salary grade of at least SG 27 of the accused public official or if his salary grade is below SG 27, his or her office is part of those enumerated.

2. The Second Cluster

Over all other offenses or felonies committed by public officials and employees mentioned above in relation to their office. Under this grouping, the allegation that the offense or felony was committed "in relation to office" is indispensable.

3. The Third Cluster

Over civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14, 14-A. These are the offenses that the Presidential Commission on Good Government (PCGG) has been especially tasked to investigate and file at the Sandiganbayan.

In cases where none of the principal accused are occupying positions corresponding to salary grade 27 or higher as prescribed in Rep. Act. 6758, or PNP officers occupying the rank of chief superintendent or higher, or their equivalent, exclusive jurisdiction thereof shall be vested in the proper RTC or MTC, MCTC pursuant to their respective jurisdictions as provided in BP 129[43]. In these instances, the Sandiganbayan exercises appellate jurisdiction over RTCs and the RTCs exercise appellate jurisdiction over the MTCs.

Note therefore that the jurisdiction of the Sandiganbayan is no longer determined by the prescribed penalty as it used to be originally under PD 1606 (1978).

With respect to the second cluster of offenses mentioned, above the crucial question is: when is an offense or felony committed in relation to office?

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[43] Rep. Act. No. 7975, Sec. 4 (1995).

In *Montilla v. Hilario*[44], which was re-affirmed in *Sanchez v. Demetriou*[45], it was held that an offense may be considered as committed in relation to office if it cannot exist without the office or if the office is a constituent element of the crime, such as the crimes mentioned in Chapters Two to Six, Title Seven, RPC, namely, malfeasance, misfeasance in office, bribery, frauds in the treasury, malversation, infidelity over prisoners or documents, disobedience, usurpation of powers, etc.

People v. Montejo[46] held that the offense must be intimately related with the office of the offender and this fact must be alleged in the information, a procedure ignored in *Deloso v. Domingo*[47] but reinstated in *Sanchez v. Demetriou*[48] and *Natividad v. Felix*[49].

In this connection, it has been held that the term "office" applies to the current office the accused is occupying not necessarily the office he was holding when charged. Hence, if one was charged for violation of Rep. Act. 3019 while a councilor and then he was later on elected vice-governor, he may still be preventively suspended as vice-governor[50]

A "public officer" includes any elective or appointive personnel whether permanent, temporary, in the career or non-career service. Under this definition, a private individual hired on a contractual basis as project manager of a government project falls under the non-career service and is a "public officer" as defined in sec. 2(b) of Rep. Act 3019[51].

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[44] 90 Phil. 49 (1951).

[45] G.R. No. 111771-77, November 9, 1993, 227 S.C.R.A. 627 (1993).

[46] 108 Phil. 613 (1960).

[47] G.R. No. 90591, November 21, 1990, 191 S.C.R.A. 545 (1990).

[48] *Supra*, note 45.

[49] G.R. No. 111616, February 4, 1994, 229 S.C.R.A. 680 (1994).

[50] Libanan v. Sandiganbayan, G.R. No. 112386, June 14, 1994, 233 S.C.R.A. 163 (1994).

[51] Preclaro v. Sandiganbayan, G.R. No. 111091, August 21, 1995, 247 S.C.R.A. 454 (1995).

But a bare allegation in the information that the accused "took advantage of their respective positions" is not sufficient to bring the offense within the definition of offenses committed "in relation to office" as held in a case for kidnapping for ransom with murder.[52]

What should be done if the information failed to allege that the offense was committed in the performance of an official duty?

If before trial, anyone has a sneaky suspicion that the criminal act was done in relation to office then, as held in *Republic v. Asuncion*[53], a preliminary hearing should be conducted for that purpose.

But suppose trial has already been terminated and the judge discovers for the first time on reviewing the evidence that the offense should have been filed in the Sandiganbayan, what then? The RTC, as held in *Cunanan v. Arceo*[54], should order the transmittal of the complete records of the case to the Sandiganbayan which should allow amendment of the information before arraignment or at anytime before judgment as if the case were filed before it. No double jeopardy arises as the RTC where the case was first filed has no competent jurisdiction to try the case.

It was mentioned earlier that for Rep. Act 7691 (Expanded Jurisdiction Law), "except in cases falling under the exclusive original jurisdiction of the RTC and the Sandiganbayan," criminal jurisdiction attaches to the MTCs. It should bear pointing out that RTCs and MTCs can now try crimes committed by public officers in relations to their office provided that they do not occupy positions corresponding to salary grade 27 or to the first cluster of public officers mentioned in Rep. Act. 7975. Between the RTC and the MTC, the basic parameter of penal jurisdiction now is the cut-off penalty of six (6) years imprisonment. This cut-off term is based on the penalty attached by

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[52] People v. Magallanes, G.R. Nos. 118013-14, October 11, 1995, 249 S.C.R.A. 212 (1995).

[53] G.R. No. 108208, March 11, 1994, 231 S.C.R.A. 211 (1994).

[54] G.R. No. 116615, March 1, 1995, 242 S.C.R.A. 88 (1995).

the statute to the crime charged, alleged or defined in the complaint or information.

As to the civil action involving crimes committed by government personnel in relation to their office, the same shall be tried together with the criminal action and no right to reserve the filing of a separate civil action shall be recognized, whether in the Sandiganbayan, the RTC or the MTC. If these actions were filed separately already when Rep. Act 7975 took effect, the two actions shall be consolidated in the same court, otherwise, the civil action shall be deemed abandoned[55].

In case private individuals are charged as co-principals, accomplices or accessories with a public officer or employee, including those in government-owned or controlled corporations, they shall be tried jointly in the proper courts which shall exercise jurisdiction over them.

Jurisdiction of the Shari'a Courts

These courts are courts of limited jurisdiction. There are three grades: (a) the *Shari'a* circuit courts which are of the same category as Municipal Trial Courts; (b) the *Shari'a* district courts which have the same rank as the RTCs; and (c) the *Shari'a* Appellate Court[56]

Insofar as criminal actions are concerned, the Shari'a district courts have no original jurisdiction, but only appellate jurisdiction over criminal cases tried in the *Sharia'a* circuit courts within their respective territorial jurisdictions.

The *Shari'a* circuit courts have original, exclusive jurisdiction over the following offenses:

(a) Offenses against customary law;

(b) Illegal solemnization of marriage under the Muslim Code;

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[55] Rep. Act. No. 7975, Sec. 4 (1995).

[56] MUSLIM CODE, Rep. Act. No. 6734 (1989).

(c) Marriages before the expiration of the prescribed idda;

(d) Offenses relative to subsequent marriage, divorce, and revocation of divorce;

(e) Failure to report for registration any fact required under the Muslim Code;

(f) Neglect of duty of registrars to perform their duty under the Muslim Code;

(g) All other offenses defined and penalized under the Muslim Code.

Courts Martial

Courts Martial are not part of the Judiciary, but are courts of the army, air force and navy. Nonetheless, since these courts have the power to send a man in uniform to jail or death, they have been included in this forum.

Courts Martial derive their authority and jurisdiction from PD 1850 (1982), a decree providing for the trial by courts-martial of members of the Integrated National Police and further defining the jurisdiction of courts-martial over members of the Armed Forces of the Philippines, as amended by PD 1952 in 1984.

Under said decrees, courts-martial have exclusive, original jurisdiction over: (a) offenses by members of the Integrated National Police even those cognizable by civil courts; and (b) all persons subject to military law under Art. 2 of the Articles of War [57] who commit any crime or offense. It says that in either situation, the criminal case of a policeman or a military personnel shall be tried and decided by the proper civil court only: (a) when courts-martial jurisdiction over the offense has prescribed under Art. 38 of C.A. 408, as amended; or (b) the court-martial jurisdiction over the accused can no longer be exercised by virtue of his or her separation from the service without jurisdiction having duly attached beforehand, unless otherwise provided by law; or

[57]Com. Act No. 408 (1938).

(c) the President, at any time before arraignment, directs that a particular case be tried by the appropriate civil court.

It has been held that if an accused is no longer in the army, a murder case filed against him shall be filed in the civil courts even if the alleged murder were committed while he was a soldier and whether or not the killing was work-connected[58].

A pre-trial investigation is not mandatory but only directory and in no way affects the jurisdiction of a court-martial[59]. A court martial has jurisdiction over the offenses committed outside a military reservation[60].

In the light of the provisions of Rep. Act 7975 regarding the jurisdiction of the Sandiganbayan in relation to Rep. Act. 7691, the provisions of PD 1850, as amended by PD 1952 regarding courts-martial, deserve a serious re-examination.

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[58] People v. Dulos, G.R. No. 107328, September 26, 1994, 237 S.C.R.A. 141 (1994).

[59] Commendador v. de Villa, G.R. No. 93177, August 2, 1991, 200 S.C.R.A. 80 (1991).

[60] Aswat v. Galido, G.R. No. 93177, August 2, 1991, 204 S.C.R.A. 205 (1991).