



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

**PRESIDENTIAL COMMISSION
ON GOOD GOVERNMENT
(PCGG),**

G.R. No. 206357

Petitioner,

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,
DEL CASTILLO,^{*}
VILLARAMA,
REYES, and
PERLAS-BERNABE,^{**} *JJ.*

**THE HONORABLE
OMBUDSMAN Conchita Carpio-
Morales, GREGORIO S.
LICAROS, GAUDENCIO
BEDUYA, JOSE R. TENGCO, JR.,
JOSE S. ESTEVES, PLACIDO T.
MAPA, JR., JULIO V. MACUJA,
VICENTE PATERNO, RAFAEL
A. SISON, ROBERTO V.
ONGPIN, ALICIA LL. REYES,
Former Members of the Board of
Governors of the Development
Bank of the Philippines (DBP),**

**RODOLFO M. CUENCA,
EDILBERTO M. CUENCA, JOSE
Y. VILLONGCO, RODOLFO B.
SANTIAGO, AURELIO Y.
BAUTISTA, GENOVEVA L.
BUENO, BIENVENIDO D. CRUZ,
ROMEO R. ECHAUZ, JORGE W.
JOSE, LEONILO M. OCAMPO,
ANTONIO P. SAN JUAN, JR.,
CLARENCO S. YUJIOCO, All
Officers of Resorts Hotels
Corporation,**

Respondents.

Promulgated:

November 12, 2014

X-----*[Signature]*-----X

* Additional Member per Raffle dated September 15, 2014.

** Acting Member per Special Order No. 1866 dated November 4, 2014.

DECISION

VELASCO, JR., J.:

The Case

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking the annulment and setting aside of the Orders dated July 19, 2011 and March 8, 2012, rendered by the Office of the Ombudsman in OMB-C-C-03-0008-A, entitled “*Presidential Commission on Good Government (PCGG) v. Rodolfo Cuenca, et al.*”

The Facts

On October 18, 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating a Presidential Ad-Hoc Fact-Finding Committee on Behest Loans (Ad Hoc Committee). A few months later, President Ramos issued Memorandum Order No. 61 prescribing certain criteria to be used by the Ad Hoc Committee as a guide in investigating and studying loans granted by government financing institutions that amount to behest loans.

One of the loan accounts referred to the Ad Hoc Committee for investigation was that of Resorts Hotel Corporation (RHC).

Incorporated in 1968 with a paid-up capital of ₱1.0 million, RHC was 37.2% owned by Rodolfo Cuenca, a known Marcos business associate. In 1969, RHC obtained a total of ₱9.7 million from DBP, allegedly to pay the balance of the purchase price of Baguio Pines Hotel and to construct an 8-storey building. In 1973, the loan was restructured and DBP granted a direct loan of ₱14.4 million and guaranteed another ₱11.2 million. In 1974, an additional loan of ₱8.9 million was granted to RHC for the expansion of its hotel project, and ₱3.6 million for the cost of 10 luxury buses. In 1975, an additional loan of ₱27.8 million was again granted to RHC for another expansion project, and in 1977, it again obtained ₱11.3 million to refinance its unpaid obligations and partly to finance Taal Vista.

To secure the loans totaling ₱86.9 million, RHC offered as collaterals the assets that were acquired by these loans which included the Baguio Pines Hotel, Taal Vista Lodge, Hotel Mindanao and the luxury buses.

In 1980, 40% of the amount were converted into DBP’s common shareholding in RHC, and the balance of ₱58.4 million was restructured. The properties were foreclosed in 1983 with arrearages of ₱11.97 million.

On the basis of the foregoing, the Ad Hoc Committee found that DBP's total exposure as of 1986 amounted to ₱99.1 million.¹

Based on the above, the Ad Hoc Committee, on January 4, 1993, submitted a report to the President where it concluded that the RHC account qualifies as behest in character anchored on the following grounds:

- a) The loans are under collateralized;
- b) The borrower corporation is undercapitalized, for its paid-up capital amounted only to ₱10.3 million upon the approval of the loans which totaled to ₱99,133,765.14 in 1986;
- c) Stockholders and officers of the borrower corporation are identified as Marcos cronies; and
- d) As revealed by the marginal notes based on Hawaii documents on file with PCGG, it was found out that then-President Marcos owned 20% of the shares of stocks in RHC.

Agreeing that the said loans bear the characteristics of a behest loan on the basis of the said Committee Report, the Republic of the Philippines, represented by the PCGG, filed an Affidavit-Complaint on January 6, 2003 with the Office of the Ombudsman, against respondent directors and officers of RHC and the directors of DBP for violation of Sections 3(e) and 3 (g) of Republic Act (RA) No. 3019 or the Anti-Graft and Corrupt Practices Act.²

¹ The account was then transferred by DBP, which it later retrieved, and RHC's assets were sold for ₱120.1 million.

² In the said Affidavit-Complaint, the following allegations were made:

9. *It appears from the foregoing facts and circumstances on record that the provisions of Section 3(e) and (g) of RA 3019 among other laws, were violated:*

“Sec. 3. Corrupt Practice of Public Officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall continue (sic) corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

xxx

xxx

“e. Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

“g. entering on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.”

10. *Among those liable for the behest loans are the following:*

a. *Officers of RHC:*

Rodolfo M. Cuenca

c/o Atty. Alfredo Anasco

Later, or on June 4, 2004, petitioner filed a Supplemental Complaint-Affidavit.³

In the questioned July 19, 2011 Order, the Ombudsman dismissed petitioner's Affidavit-Complaint for lack of jurisdiction. The *fallo* of the Order reads:

PREMISES CONSIDERED, this complaint is *DISMISSED* for lack of jurisdiction inasmuch as only Private (sic) parties are charged due to the refusal of the Development (sic) Bank of the Philippines to furnish the [p]ertinent documents that will identify the public respondents Involved (sic).

Petitioner moved for reconsideration, arguing, among others, that the Ombudsman erred in dismissing its Affidavit-Complaint since its Supplemental Complaint-Affidavit enumerates the directors of DBP who conspired with herein private respondents in granting the behest loans subject of the case.

	448 EDSA, Guadalupe, Makati City c/o 11 th Floor, PDCP -Building, Ayala Avenue Makati City
Edilberto M. Cuenca Jose Y. Villongco Rodolfo B. Santiago	

b. DBP officers who recommended approval of, and Board of Directors who approved the loan accommodations of RHC from 969 (sic) to 1980 prejudicial to government and the people.

xxx

xxx

xxx.

³ The Supplemental Complaint-Affidavit contained the following averments:

3. The following were the members of the DBP Board of Governors at the time of the application and approval of said loans:

Gregorio S. Licaros	- Chairman (January 27, 1966 to January 9, 1970)
Gaudencio Beduya	- Governor (January 23, 1966 to September 12, 1969)
Recio M. Garcis	- (February 14, 1966 to July 25, 1980)
Leon O. Ty	- Governor (February 16, 1966 to February 20, 1980)
Jose R. Tengco, Jr.	- Governor (February 7, 1967 to August 14, 1981)
Jose S. Estevez	- Governor (May 19, 1967 to December 16, 1972)
Jose V. De Ocampo	- Governor (February 9, 1968 to March 31, 1974) - Acting Vice-Chairman (April 1, 1974 to April 15, 1981)
Placido L. Mapa, Jr.	- Governor (April 29, 1968 to May 22, 1970)
Julio V. Macuja	- Chairman (January 10, 1970 to March 5, 1970)
Leonides S. Virata	- Chairman (March 5, 1970 to July 13, 1976)
Alejandro A. Melchor	- Governor (December 15, 1970 to June 3, 1986)
Vicente Paterno	- Governor (June 27, 1974 to March 15, 1981)

xxx

xxx

xxx

It appears from the foregoing facts and circumstances on record that the undue and undeserved accommodation of RHC as shown by DBP's grant and approval of loans [is] grossly disadvantageous to the government and the Filipino people [and] warrant the prosecution of those responsible therefor for violation of Section 3 (e) and (g) of Republic Act No. 3019, otherwise known as "The Anti-Graft and Corrupt Practices Act" xxx.

xxx

xxx

xxx .

Acting on the motion, the Ombudsman, on March 8, 2012, issued the second assailed Order dismissing the complaint on the ground of prescription, effectively denying the motion for reconsideration.

In the said Order, the Ombudsman stated that:

In as much as the record indicates that the instant complaint was filed with this office only on **6 January 2003**, or more than ten (10) years from the time the crimes were discovered on **4 January 1993**, the offenses charged herein had already prescribed. This office, therefore has no other recourse but to DISMISS the instant complaint.

In light of the foregoing discussion, this Office sees no need to dispose of the other issues complainant raised in its Motion for Reconsideration.

WHEREFORE, on account of prescription of the offenses charged, the criminal complaint for violation of Section 3 (e) and (g) of (sic) R.A. 3019 against respondents is hereby *DISMISSED*.

SO ORDERED.

Aggrieved, petitioner seeks recourse from this Court, arguing that contrary to the decision of the Ombudsman, the offense has not yet prescribed. Petitioner insists that the prescriptive period should only commence to run on January 6, 2003 when it filed the Affidavit-Complaint with the Office of the Ombudsman, and not on January 4, 1993 when the crimes were discovered. This argument, according to petitioner, is based on Section 2 of Act No. 3326⁴ which states that “[p]rescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.” Moreover, Section 11 of RA 3019 sets the prescription of offenses under said law at fifteen (15) years,⁵ not ten (10) as held by the Ombudsman.

The Issue

Based on the above backdrop, the issue submitted for this Court’s resolution is whether or not respondent Ombudsman committed grave abuse of discretion in dismissing the Affidavit-Complaint dated January 6, 2003 on the ground of prescription.

Our Ruling

The petition is without merit.

RA 3019, Section 11 provides that all offenses punishable under said law shall prescribe in ten (10) years. This period was later increased to

⁴ An Act To Establish Periods Of Prescription For Violations Penalized By Special Acts And Municipal Ordinances And To Provide When Prescription Shall Begin To Run.

⁵ Citing *Presidential Ad Hoc Fact-Finding Committee on Behest Loans vs. Hon. Aniano A. Desierto*, G.R. No. 130817, August 22, 2001, 363 SCRA 489, 493-495.

fifteen (15) years with the passage of Batas Pambansa (BP) Blg. 195, which took effect on March 16, 1982. This does not mean, however, that the longer prescriptive period shall apply to all violations of RA 3019.

Following Our pronouncements in *People v. Pacificador*,⁶ the rule is that “in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted.” As such, the longer prescriptive period of 15 years pursuant to BP Blg. 195 cannot be applied to crimes committed prior to the effectivity of the said amending law on March 16, 1982.

Considering that the crimes were committed in 1969, 1970, 1973, 1975, and 1977, the applicable prescriptive period thereon is the ten-year period set in RA 3019, the law in force at that time. What is, then, left for Our determination is the reckoning point for the 10-year period.

Notably, RA 3019 is silent as to when the period of prescription shall begin to run. This void, however, is remedied by Act No. 3326,⁷ Section 2 of which provides in part:

Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment. xxx.

Based on the above, there are two reckoning points for the counting of the prescription of an offense: 1) the day of the commission of the violation of the law; and 2) if the day when the violation was committed be not known, then it shall begin to run from the discovery of said violation and the institution of judicial proceedings for investigation and punishment.

The first mode being self-explanatory, We proceed with Our construction of the second mode.

In interpreting the meaning of the phrase “if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation,” this Court has, as early as 1992 in *People v. Duque*,⁸ held that in cases where the illegality of the activity is not known to the complainant at the time of its commission, Act No. 3326, Section 2 requires that prescription, in such a case, would begin to run only from the discovery thereof, i.e. discovery of the unlawful nature of the constitutive act or acts.⁹

⁶ G.R. No. 139405, March 13, 2001, 354 SCRA 311, 319.

⁷ “An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide when Prescription shall Begin to Run.”

⁸ G.R. No. 100285, August 13, 1992, 212 SCRA 607.

⁹ Id. at 615.

It is also in *Duque*¹⁰ where this Court espoused the *raison d'être* for the second mode. We said, “[i]n the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.”¹¹

Further clarifying the meaning of the second mode, the Court, in *Duque*,¹² held that Section 2 should be read as “[p]rescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and *until* the institution of judicial proceedings for its investigation and punishment.”¹³ Explaining the reason therefor, this Court held that a contrary interpretation would create the absurd situation where “the prescription period would both begin and be interrupted by the same occurrence; the net effect would be that the prescription period would not have effectively begun, having been rendered academic by the simultaneous interruption of that same period.”¹⁴ Additionally, this interpretation is consistent with the second paragraph of the same provision which states that “prescription shall be interrupted when proceedings are instituted against the guilty person, [and shall] begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.”

Applying the same principle, We have consistently held in a number of cases, some of which likewise involve behest loans contracted during the Marcos regime, that the prescriptive period for the crimes therein involved generally commences from the discovery thereof, and not on the date of its actual commission.

In the 1999¹⁵ and 2011¹⁶ cases of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, the Court, in said separate instances, reversed the ruling of the Ombudsman that the prescriptive period therein began to run at the time the behest loans were transacted and instead, it should be counted from the date of the discovery thereof.

In the 1999 case, We recognized the impossibility for the State, the aggrieved party, to have known the violation of RA 3019 at the time the questioned transactions were made in view of the fact that the public officials concerned connived or conspired with the “beneficiaries of the loans.” There, We agreed with the contention of the Presidential Ad Hoc Fact-Finding Committee that the prescriptive period should be computed

¹⁰ Id. at 613-614. See also *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130140, October 25, 1999, 317 SCRA 273.

¹¹ Cited in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130140, October 25, 1999, 317 SCRA 273.

¹² *Supra* note 8.

¹³ Id.

¹⁴ Id. at 614.

¹⁵ G.R. No. 130140, October 25, 1999, 317 SCRA 273.

¹⁶ G.R. No. 135715, April 13, 2011, 648 SCRA 586.

from the discovery of the commission thereof and not from the day of such commission. It was also in the same case where We clarified that the phrase “if the same be not known” in Section 2 of Act No. 3326 does not mean “lack of knowledge” but that the crime “is not reasonably knowable” is unacceptable. Furthermore, in this 1999 case, We intimated that the determination of the date of the discovery of the offense is a question of fact which necessitates the reception of evidence for its determination.

Similarly, in the 2011 *Desierto* case, We ruled that the “blameless ignorance” doctrine applies considering that the plaintiff therein had no reasonable means of knowing the existence of a cause of action.¹⁷ In this particular instance, We pinned the running of the prescriptive period to the completion by the Presidential Ad Hoc Fact-Finding Committee of an exhaustive investigation on the loans. We elucidated that the first mode under Section 2 of Act No. 3326 would not apply since during the Marcos regime, no person would have dared to question the legality of these transactions.¹⁸

Prior to the 2011 *Desierto* case came Our 2006 Resolution¹⁹ in *Romualdez v. Marcelo*,²⁰ which involved a violation of Section 7 of RA 3019. In resolving the issue of whether or not the offenses charged in the said cases have already prescribed, We applied the same principle enunciated in *Duque*²¹ and ruled that the prescriptive period for the offenses therein committed began to run from the discovery thereof on the day former Solicitor General Francisco I. Chavez filed the complaint with the PCGG.

This was reiterated in *Disini v. Sandiganbayan*²² where We counted the running of the prescriptive period in said case from the date of discovery of the violation after the PCGG’s exhaustive investigation despite the highly publicized and well-known nature of the Philippine Nuclear Power Plant Project therein involved, recognizing the fact that the discovery of the crime necessitated the prior exhaustive investigation and completion thereof by the PCGG.

In *Republic v. Cojuangco, Jr.*,²³ however, We held that not all violations of RA 3019 require the application of the second mode for computing the prescription of the offense. There, this Court held that the second element for the second mode to apply, i.e. that the action could not have been instituted during the prescriptive period because of martial law, is absent. This is so since information about the questioned investment therein was not suppressed from the discerning eye of the public nor has the Office of the Solicitor General made any allegation to that effect. This Court likewise faulted therein petitioner for having remained dormant during the

¹⁷ Id. at 596.

¹⁸ Id. at 597.

¹⁹ Which resolved therein petitioner’s Motion for Reconsideration of Our 2005 Decision.

²⁰ G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89.

²¹ Supra note 8.

²² G.R. No. 169823-24, September 11, 2013.

²³ G.R. No. 139930, June 26, 2012.

remainder of the period of prescription despite knowing of the investment for a sufficiently long period of time.

An evaluation of the foregoing jurisprudence²⁴ on the matter reveals the following guidelines in the determination of the reckoning point for the period of prescription of violations of RA 3019, *viz.*:

1. As a general rule, prescription begins to run from the date of the commission of the offense.
2. If the date of the commission of the violation is not known, it shall be counted from the date of discovery thereof.
3. In determining whether it is the general rule or the exception that should apply in a particular case, the availability or suppression of the information relative to the crime should first be determined.

If the necessary information, data, or records based on which the crime could be discovered is readily available to the public, the general rule applies. Prescription shall, therefore, run from the date of the commission of the crime.

Otherwise, should martial law prevent the filing thereof or should information about the violation be suppressed, possibly through connivance, then the exception applies and the period of prescription shall be reckoned from the date of discovery thereof.

In the case at bar, involving as it does the grant of behest loans which We have recognized as a violation that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentation,²⁵ the second mode applies. We, therefore, count the running of the prescriptive period from the date of discovery thereof on January 4, 1993, when the Presidential Ad Hoc Fact-Finding Committee reported to the President its findings and conclusions anent RHC's loans. This being the case, the filing by the PCGG of its Affidavit-Complaint before the Office of the Ombudsman on January 6, 2003, a little over ten (10) years from the date of discovery of the crimes, is clearly belated. Undoubtedly, the ten-year period within which to institute the action has already lapsed, making it proper for the Ombudsman to dismiss petitioner's complaint on the ground of prescription.


Simply put, and as correctly held by the Ombudsman, prescription has already set in when petitioner PCGG filed the Affidavit-Complaint on January 6, 2003.

²⁴ *People v. Duque*, G.R. No. 100285, August 13, 1992; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130140, October 25, 1999; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 135715, April 13, 2011; *Disini v. Sandiganbayan*, G.R. No. 169823-24, September 11, 2013; *Republic v. Cojuangco, Jr.*, G.R. No. 139930, June 26, 2012.

²⁵ *Republic v. Cojuangco, Jr.*, G.R. No. 139930, June 26, 2012.

WHEREFORE, the instant petition is hereby **DISMISSED**. The Orders dated July 19, 2011 and March 8, 2012 rendered by the Office of the Ombudsman in OMB-C-C-03-0008-A, entitled *Presidential Commission on Good Government (PCGG) v. Rodolfo Cuenca, et al.*, are hereby **AFFIRMED**.


SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


MARIANO C. DEL CASTILLO
 Associate Justice



MARTIN S. VILLARAMA, JR.
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice


ESTELA M. PERLAS-BERNABE
 Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
 Acting Chief Justice