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High court affirms cases vs Marcos crony Disini

By: Christine O. Avendaño - @inquirerdotnet Philippine Daily Inquirer / 01:32 AM October 01, 2013

The Supreme Court has ruled that the Sandiganbayan can try the pending criminal cases against businessman Herminio Disini, a crony of the late dictator Ferdinand Marcos, in connection with the corruption-ridden Bataan Nuclear Power Plant (BNPP) deal.

In a 5-0 vote, the Supreme Court First Division decided on Sept. 11 that the antigraft court had jurisdiction over the alleged offenses of Disini and the businessman himself even if he was a private individual and his cases had not yet prescribed as he had claimed.

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“The Sandiganbayan has exclusive original jurisdiction over the criminal action involving petitioner notwithstanding that he is a private individual considering that his criminal prosecution is intimately related to the recovery of the ill-gotten wealth of the Marcoses, their immediate family, subordinates and close associates,” said the decision penned by Associate Justice Lucas Bersamin.

In a summary of the decision released by the Supreme Court public information office, the high court denied “for lack of merit” Disini’s bid to quash two criminal cases pending in the Sandiganbayan.

Disini had gone to the high court to question the Jan. 17 and Aug. 10, 2005, resolutions of the Sandiganbayan on two cases against him.

The first case accused Disini of offering his shares in Vulcan Industrial and Mining Corp. and Energy Corp. to Marcos through the late president’s Engineering and Construction Company of Asia so as to allow Disini to seek and obtain for two foreign companies—Burns and Roe and Westinghouse Electrical Corp.—the contracts to design and build the BNPP. The two firms

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The second case against Disini accused him of using his close ties with Marcos to request and receive from Burns and Roe the amount of \$1 million and from Westinghouse, \$17 million, for the BNPP contract.

On Aug. 2, 2004, Disini filed a motion to quash the cases allegedly because the prescription period had expired when they were filed. He also said the Sandiganbayan had no jurisdiction over him because he was a private individual.

But the Sandiganbayan denied his motion as well as his subsequent motion for reconsideration.

Acting on Disini’s petition for certiorari, the Supreme Court First Division ruled that the Sandiganbayan had jurisdiction over the offenses and over Disini.

The court said the Sandiganbayan was created through Presidential Decree No. 1606 and was amended later by Republic Act Nos. 7975 and 8249. Under Section 4c of RA 8249, the special appellate collegial court was vested with jurisdiction over civil and criminal cases filed by the Presidential Commission on Good Government (PCGG) under Executive Order Nos. 1, 2 and 14-A.




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While the high court division said the cases versus Disini were initially filed by the PCGG under its mandate through the executive orders, these “clearly fall under the Sandigan’s jurisdiction under RA 8249 Section 4c.”

“That Disini was a private individual did not remove the offenses charged from the jurisdiction of the Sandiganbayan. EO No. 1 Sec. 2 expressly granted the authority to PCGG to recover ill-gotten wealth and this covered Marcos’ immediate family, relatives, subordinates, without distinction as to their private or public status,” said the high court division that was concurred in by Chief Justice Ma. Lourdes Sereno and Justices Martin Villarama, Jose Perez and Bienvenido Reyes.

The high court division also held that the cases against Disini had not yet been prescribed.

It disagreed with Disini’s contention that the prescription period of the cases against him began to run from 1974 when the BNPP contracts were awarded to the two foreign firms.

The high court division said the offenses involving the BNPP were only discovered after Marcos was ousted by a people power uprising in 1986 and after the PCGG conducted an exhaustive investigation into the BNPP issue.

“The prevailing rule on prescription is that, irrespective of whether the offense charged is a felony punishable by the Revised Penal Code or a crime punished by a special law, it is the filing of the complaint or information in the office of the public prosecutor for purposes of preliminary investigation