



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Maria Lourdes M. Lobiano-Alviola
MARIA LOURDES M. LOBIANO-ALVIOLA
Executive Clerk of Court II
OCC Fourth Division, Sandiganbayan

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-16-CRM-
0425, 0426, 0427 and 0432

For: (1) Violation of Section 3 (a) of R.
A. No. 3019, as amended, and
(2) Violation of X126.2(c)(1)(2) of
The Manual of Regulation for
Banks (MORB) in relation to
Section 36 and 37 of R. A. No.
7853

-versus-

PROSPERO A. PICHAY, JR., ET AL.,
Accused.

Present:

QUIROZ, J., *Chairperson*
CRUZ, J.
CALDONA, J.*

Promulgated on:
MARCH 17 2019 / *MARCH 2019*

X-----X

RESOLUTION

CRUZ, J.

On 17 January 2019, the Court issued an Order,¹ directing accused Prospero A. Pichay, Jr. ("Pichay") to show cause why he should not be suspended under Republic Act (R. A.) No. 3019. On 06 February 2019,² accused Pichay filed his Compliance [Re: Show Cause Order dated 17 January 2019],³ claiming that the peculiar circumstances of his case, in addition to other compelling reasons

* Sitting as a Special Member as per Administrative Order No. 227-2017 dated June 16, 2017

¹ Records, Vol. XIII, p. 309

² Note: On 07 February 2019, the Court granted accused Pichay's Motion for Additional Time, asking this Court for another ten (10) days reckoned from 27 January 2019, or until 06 February 2019, within which to file his compliance (Records, Vol. XIII, pp. 354-356, 358)

³ Records, Vol. XIII, pp. 361-365

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RESOLUTION

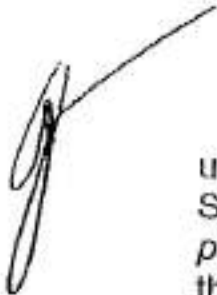
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justify the non-issuance of a preventive suspension order against him. Mainly, accused Pichay posits that ordering his suspension from office will not serve the purpose and rationale behind the law. He explains that the essence of preventive suspension is to allow the disciplining authority to conduct an unhampered investigation, and thus, a suspension order is issued to prevent an accused from using his position and/or the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital to the prosecution of the case. Here, accused Pichay belies the possibility of tampering with the records because all of the documents pertaining to the present case are submitted and are already in the possession of the Office of the Ombudsman. Moreover, accused Pichay avers that it is unlikely for him to influence and threaten potential witnesses, arguing that he is no longer the Chairman of the Local Water Utilities Administration (LWUA) hence, he wields no powers over its employees. Accused Pichay further underscores the stipulation of the parties to waive the presentation of their respective witnesses. He maintains that the fear of tampering with the evidence and threatening witnesses are unfounded, considering that the present criminal proceeding is at a stage where the parties have agreed that the Court should decide based on the stipulations, admissions, and legal memoranda submitted by them. Accused Pichay also points out that he is the incumbent Representative of the First (1st) District of Surigao del Sur and the Deputy Speaker of the House of Representatives. He contends that he currently holds an elective legislative office which is completely different from the appointive position that he held in relation to the instant case. Thus, he claims that it cannot be presumed that the alleged malfeasance would continue to be committed in his present office. Furthermore, based on the doctrine of separation of powers and pursuant to Section 16(3), Article VI of the Constitution, he concludes that it is the Congress who has the authority to impose disciplinary actions upon him.

Accused Pichay's contention is without merit.



In this case, the records show that accused Pichay is charged under three (3) separate valid Informations⁴ with violations of Section 3 (e) of R. A. No. 3019. Significantly, the suspension *pendent lite* of the said accused is mandated under Section 13 thereof, which provides, thus:

⁴ Records, Vol. XIII, pp. 1-16



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Section 13. *Suspension and loss of benefits.* Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

The duty of this Court to order such suspension *vis-à-vis* the mandatory nature of the above-quoted provision is recognized in the case of *Gerardo R. Villaseñor, et al., vs. Sandiganbayan, et al.*,⁵ where it is affirmed that this Court, by putting the accused under suspension, is merely doing what is required of it by law, viz.:

xxx It is well-settled that preventive suspension under Section 13 of R. A. No. 3019 is mandatory. It is evident from the very wording of the law xxx Section 13 of R. A. No. 3019, as amended, unequivocally provides that the accused public officials "shall be suspended from office" while the criminal prosecution is pending in court. xxx Again, in *Bolastig v. Sandiganbayan*, the Court stressed the mandatory nature of preventive suspension as follows:

...It is now settled that Sec. 13 of Republic Act No. 3019 makes it mandatory for the Sandiganbayan to suspend any public official against whom a valid information charging violation of that law, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property is filed. The court trying a case has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continuing committing malfeasance in office. The presumption is that unless the accused is suspended he may frustrate his prosecution or commit further acts of malfeasance or do both, in the same way that upon a finding that there is probable cause to believe that a crime has been committed and that the accused is probably guilty thereof, the law requires the judge to issue a warrant for the arrest of the accused. The law does not require the court to determine whether the accused is likely to escape or evade the jurisdiction of the court.

Clearly, there can be no doubt as to the validity of the Sandiganbayan's suspension of petitioners in connection with the pending criminal case before it. It was merely doing what is required of it by law. xxx

⁵ G. R. No. 180700, March 4, 2008

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Also, it is of no consequence that accused Pichay is presently holding an office which is completely different from the previous position that he held in relation to the instant case because it is doctrinal that *suspension pendent lite* applies to any office that the public officer is currently holding. The case of *Dr. Demetrio Beroña, et al., vs. Sandiganbayan, et al.*,⁶ citing *Segovia v. Sandiganbayan*,⁷ is instructive:

xxx The provision of suspension *pendente lite* applies to all persons indicted upon a valid information under the Act, whether they be appointive or elective officials; or permanent or temporary employees, or pertaining to the career or non-career service. It applies to a Public High School Principal; a Municipal Mayor; a Governor; a Congressman; a Department of Science and Technology (DOST) non-career Project Manager; a Commissioner of the Presidential Commission on Good Government (PCGG). The term "office" in Section 13 of the law applies to any office which the officer might currently be holding and not necessarily the particular office in relation to which he is charged. (Emphasis supplied) xxx

WHEREFORE, premises considered, the Court hereby orders the **SUSPENSION** *pendente lite* of accused **PROSPERO A. PICHAY, JR.**, as the First (1st) District Representative of Surigao del Sur, and is hereby directed to **CEASE and DESIST** from performing and/or exercising the functions and duties, as well as receiving and/or enjoying the salaries, benefits, and privileges of his current public position or any other public office or position he may now or hereafter be holding, effective upon notice hereof and continuing for a period of ninety (90) days.


Let the House of Representatives be furnished with a copy of this Resolution for the proper implementation of the order of suspension against the accused. The House of Representatives is further enjoined to inform this Court of its action thereon within five (5) days from receipt hereof. The suspension of the accused is deemed automatically lifted upon expiration of the ninety (90)-day period from the implementation of this Resolution.



SO ORDERED.

⁶ G. R. No. 142456, July 27, 2004

⁷ G. R. No. 124067, March 27, 1998



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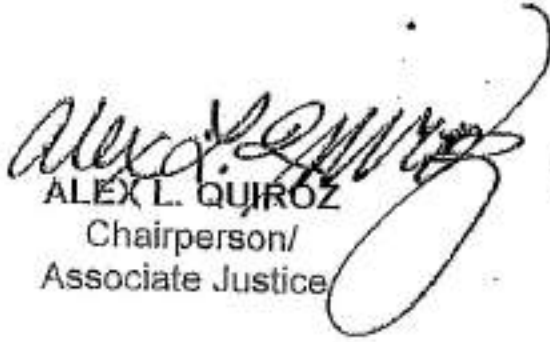
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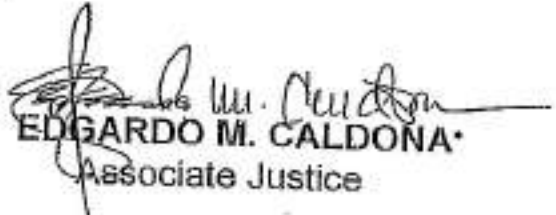
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REYNALDO P. CRUZ
Associate Justice

We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


EDGARDO M. CALDONA*
Associate Justice

* Sitting as a Special Member as per Administrative Order No. 227-2017 dated June 16, 2017