



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-17-CRM-0057

For: Violation of Section 3 (e) of
Republic Act (R.A.) No. 3019

-versus-

**NELSON CANLAS DAVID
ET AL,**

Accused,

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-17-CRM-0058

For: Violation of Section 3 (g) of
Republic Act (R.A.) No. 3019

-versus-

**NELSON CANLAS DAVID
ET AL,**

Accused

PRESENT:

FERNANDEZ, SJ, J., *Chairperson*
MIRANDA, &
VIVERO, JJ.

Promulgated:

JUL 25 2019

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[Handwritten signatures]

RESOLUTION

MIRANDA, J.:

This resolves the suspension *pendente lite* of accused Nelson C. David (David).

In its Order dated July 2, 2019 and pursuant to Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan,¹ the Court directed accused David, an incumbent Municipal Mayor of Limay, Bataan, to show cause why he should not be suspended *pendente lite* in accordance with Section 13 of R.A. No. 3019.

In his Compliance with Notice of Change of Address dated July 11, 2019, accused David alleged that: 1) he has not been the Municipal Mayor of Limay, Bataan for almost a decade; 2) it was private complainant, Lilver Roque (Roque), who held the said position for three consecutive terms; 3) during such time, it was impossible for him to influence, pressure or intimidate witnesses or tamper documentary evidence in the conduct of investigations in these cases; and 4) the Prosecution had rested its case and the Defense has already started the initial presentation of its evidence. Accused David further notified the Court of the change of address of his counsel.

The Court does not find merit in the arguments of accused David.

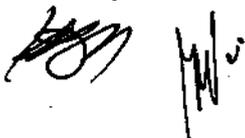
The power of this Court to order the suspension *pendente lite* of an incumbent public official charged with violation of R.A. No. 3019, as amended, or Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property is supported by law and has been steadfastly upheld by the Supreme Court in many of its decisions.

Section 13 of R.A. No. 3019, as amended, provides:

SEC. 13. *Suspension and loss of benefits.* Any incumbent public officer against whom any criminal prosecution under a

¹ Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan:

Suspension pendente lite. – After the arraignment of an accused public officer against whom a valid information charging any of the violations referred to in Section 13 of R.A. No. 3019 is filed, the Sandiganbayan shall *motu proprio* give the accused a non-extendible period of ten (10) calendar days from notice within which to explain in writing why he should not be preventively suspended. Thereafter, the Sandiganbayan shall issue an order of preventive suspension of the accused, if found warranted under the aforesaid provision of R.A. No. 3019, as well as applicable decisions of the Supreme Court.



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valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, 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.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to retribute the same to the government.

The following conditions must concur to suspend the accused *pendente lite*: 1) the accused is an incumbent public official; and 2) accused must be charged under a valid information for violation of R.A. No. 3019, as amended, or Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property.

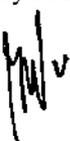
In these cases, the two conditions are present.

First, accused David is an incumbent public official. Accused David admitted in his Compliance with Notice of Change of Address dated July 11, 2019 that he is the incumbent Mayor of Limay, Bataan.

Second, the Informations filed against accused David are valid. He was charged with violation of Section 3 (e) of R.A. No. 3019 under the Information dated September 15, 2014 and violation of Section 3 (g) of R.A. No. 3019 under the Information dated September 15, 2014. Accused David was arraigned on August 1, 2017, during which he entered a plea of "not guilty" to the charges in the said Informations.

Having entered his plea, accused David is deemed to have waived any objection he may have on the validity of the Informations under which he was charged, except on the following grounds: 1) the Informations charge no offense; 2) the Court has no jurisdiction over the offenses charged; 3) the penalty or the offense has been extinguished; and 4) double jeopardy has attached. David and his co-accused assailed the jurisdiction of this Court in their Motion to Quash dated February 3, 2017.² The said motion was, however, denied with finality by this Court in its Resolution dated June 20, 2017.


² See Manifestation dated March 13, 2017 of accused David adopting the Motion to Quash dated February 3, 2017 filed by co-accused Jocelyn B. Linao, Felicidad I. Cruz, and Rolando L. Flores.

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In *Miranda v. Sandiganbayan, et al.*,³ the Supreme Court stressed:

It is basic that entering a plea waives any objection the petitioner may have to the validity of the information except on the following grounds: 1) the information charges no offense; 2) the trial court has no jurisdiction over the offense charged; 3) the penalty or the offense has been extinguished; and 4) double jeopardy has attached. Objections to the sufficiency of the allegations in the Amended Information do not fall among the exceptions to the rule. They fall under the objection that the information “does not conform substantially to the prescribed form”. Needless to state, the petition has by his acts acquiesced to the validity and sufficiency of the Amended Information.

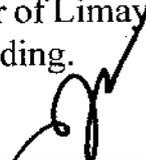
With the concurrence of the two conditions, the suspension *pendente lite* of accused David becomes mandatory. Once the Informations are found to be sufficient in form and substance or their validity is determined, it becomes the ministerial duty of this Court to issue an order of suspension *pendente lite* and “**there are no ifs and buts about it**”.⁴

In *Beroa v. Sandiganbayan*,⁵ the Supreme Court emphasized:

Section 13 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending criminal prosecution under RA 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. **This Court has repeatedly held that such preventive suspension is mandatory, and there are no ifs or buts about it.**⁶

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. The court has neither discretion nor duty to determine whether suspension *pendente lite* is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office.⁷

WHEREFORE, premises considered, accused **NELSON C. DAVID** is ordered **SUSPENDED** *pendente lite*, for a period of ninety (90) days, as Mayor of Limay, Bataan, or any other public position he may now or hereafter be holding.

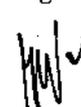

³ G.R. No. 154098, July 27, 2005.

⁴ *Marcelino C. Libanan v. Sandiganbayan*, G.R. No. 112386, June 14, 1994; Emphasis supplied.

⁵ G. R. No. 142456, July 27, 2004.

⁶ Emphasis supplied.

⁷ *Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994.

Accused Nelson C. David is ordered to **CEASE AND DESIST** from further performing and/or exercising the functions, duties, and privileges of his position upon the implementation of this Order of Preventive Suspension. The suspension of the accused shall be automatically lifted upon the expiration of the 90-day period from the implementation of this resolution.

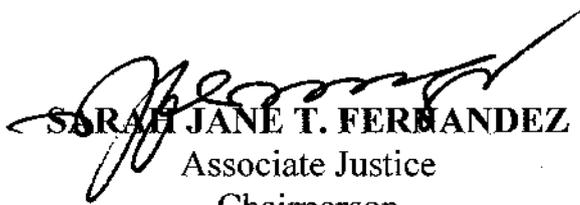
Let a copy of this Resolution be furnished the Secretary of the Department of the Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary of the DILG, or his duly authorized representative, is directed to inform the Court of the action taken thereon, the actual date of the implementation of the suspension, and the expiry date of the 90-day period, within fifteen (15) days from receipt hereof.

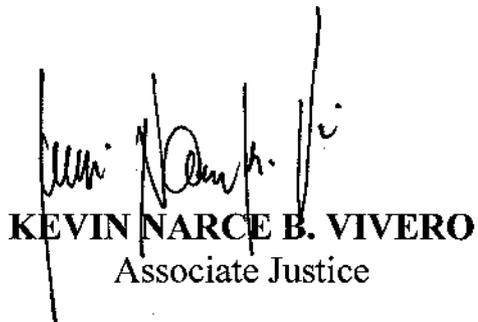
The Notice of Change of Address is NOTED.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice

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