



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CRIM. CASES NOS. **SB-17-CRM-2152**
to SB-17-CRM-2154

For: Violation of Section 3(g) of R. A. 3019

MILAGROSA T. TAN and
ROSELYN L. LARCE,

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CRIM. CASES NOS. **SB-17-CRM-2155**
to SB-17-CRM-2159

For: Violation of Section 3(e) of R. A. 3019

MILAGROSA T. TAN, ET AL.,

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CRIM. CASES NOS. **SB-17-CRM-2160**
to SB-17-CRM-2164

For: Malversation of Public Funds or Property
(Art. 217, RPC)

MILAGROSA T. TAN, ET AL.,

Accused.

X-----X

Present :

DE LA CRUZ, J., *Chairperson*

ECONG, J.

CALDONA, JJ.

Promulgated on :

NOV 23 2018

[Signature]

X-----X

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RESOLUTION

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RESOLUTION

In an Order given in open court at the Pre-trial on October 5, 2018, the accused were given a period of ten (10) days from notice to explain why they should not be suspended *pendente lite* pursuant to Section 13 of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

In their separate Compliances, dated October 25 and 26, 2018, all the accused contend that no suspension *pendente lite* should be imposed upon them.

Accused Milagrosa T. Tan submits that the purposes for the imposition of suspension *pendente lite* under the law are to prevent the accused from using his/her position and the powers and prerogatives of his/her office to influence, intimidate or harass potential witnesses, tamper or manipulate with records which may be vital in the prosecution of the case against him/her, and/or to prevent the accused from continuing the commission of malfeasance in office.

Considering that although she is an incumbent Member of the House of Representatives, she is no longer the Governor of the Province of Samar, which was the position she held at the time material to the cases. Thus, she has no more access to the records involved. Considering also that, based on the stipulation of the prosecution and the defense that the remaining issue to be resolved does not involve factual issue, but the only issue of whether or not the purchase of medicines and dental supplies is necessary, the records of these cases and presentation of witnesses are no longer material. Besides, she has no intention of committing malfeasance in office.

Accused Rolando B. Montejo and Francisco M. Detosil posits that they had retired from government service effective February 21, 2015 and June 1, 2014, respectively.

Accused Bienvenido Z. Sabenecio, Jr. avers that he did not violate RA 3019 considering that his participation in the cases is only ministerial in nature.

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RESOLUTION

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Accused Ariel G. Yboa and George G. Abrina assure the Court that they will not use their positions to influence potential witnesses or tamper with the records which may be vital in the prosecution of the cases against them. In addition, they state that suspending them will deprive them of their meager income and would incapacitate them to support their families.

Section 13 of RA 3019 provides:

Sec. 13. *Suspension and loss of benefits.* – Any incumbent public officer against whom any criminal prosecution under a 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 a complex offense and in whatever stage of execution and mode of participation, is pending in court, *shall* be suspended from office. xxx

All the accused are charged with violation of Section 3(e) and 3(g) of RA 3019, and for Malversation of Public Funds or Property, defined and penalized under Article 217, Chapter Four, Title 7, Book II of the Revised Penal Code.

Indeed, it is mandatory for the court to immediately issue the suspension order upon a proper determination of the validity of the Information. Thus:

Pursuant to this provision, it becomes mandatory to immediately issue the suspension order upon a proper determination of the validity of the Information. The court possesses no discretion to determine whether a preventive suspension is necessary to forestall the possibility that the accused may use his office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance. The presumption is that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both.¹

The validity of the Informations in these cases had already been determined upon the arraignment of the accused on June 22, 2018, when they all pleaded “Not Guilty” to the charges against them.

¹ *Dela Cruz v. Sandiganbayan*, 608 SCRA 37, 48

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It is well settled that suspension from public office does not constitute a penalty, as this court has explained in *Bayot v. Sandiganbayan*.²

xxx. Paragraph 3 of Article 24 of the Revised Penal Code clearly states that suspension from the employment or public office during the trial or in order to institute proceedings shall not be considered as penalty. It is not a penalty because it is not imposed as a result of judicial proceedings. In fact, if acquitted, the official concerned shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension. Those mentioned in paragraph Nos. 1, 3 and 4 of said Article 24 are merely preventive measures before final judgment.

Section 13 of RA 3019 is so clear and explicit that there is hardly any room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending a 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. The Supreme Court has also repeatedly held that such preventive suspension is mandatory, and there are no ifs and buts about it.

WHEREFORE, in light of all the foregoing, the Court resolves to suspend *pendente lite* the following accused:

1. Milagrosa Tee Tan - Provincial Governor (now congresswoman)
2. Bienvenido Zabala Zabanecio, Jr. - Provincial Treasurer
3. Ariel Gacusan Yboa - OIC-Provincial General Service Office
4. George Guarino Abrina - Supply Officer

from their respective current positions, and from any other public office which they may now or hereafter be holding, for ninety (90) days from receipt of this resolution.

This resolution is immediately executory.

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Let a copy of this resolution be furnished the Speaker of the House of Representatives, the Secretary, Department of Interior and Local Government, who are directed to implement the same.

SO ORDERED.


EFREN N. DE LA CRUZ
Chairperson/Associate Justice


GERALDINE FAITH A. ECONG
Associate Justice


EDGARDO M. CALDONA
Associate Justice