



Republic of the Philippines

Sandiganbayan

Quezon City

SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-17-CRM-2402 - 2405

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

-versus-

PRESENT:

FERNANDEZ, SJ, J., *Chairperson*

MIRANDA, J., &

VIVERO, J.

**ALEJANDRO N.
ABARRATIGUE,
ESMERALDA H. FRINCILLO,
LESARBO L. MENGOTE,
RAUL R. TAPIA, RENATO M.
ABAYARE, ROEL A. PAZON
and ALAN A. BABON,**

Accused,

Promulgated:

AUG 09 2019 

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RESOLUTION

MIRANDA, J.:

This resolves the suspension *pendente lite* of accused Esmeralda H. Frincillo (Frincillo), Lesarbo L. Mengote (Mengote), Raul R. Tapia (Tapia), Renato M. Abayare (Abayare), Roel A. Pazon (Pazon) and Alan A. Babon (Babon).

In the May 22, 2019 hearing, the Court inquired from the accused who among them were holding public positions. In response, the counsels of the accused stated that all of the accused, except accused Alejandro N. Abarratigue (Abarratigue), are incumbent public officers of the Municipality of Hinabangan, Samar. Thus, in its Order dated May 22, 2019 and pursuant to Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan,¹ the


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

Court directed all accused, except accused Abarratigue, to show cause why they should not be suspended *pendente lite* in accordance with Section 13 of R.A. No. 3019 within ten (10) days.

In their Comment dated May 28, 2019, accused Frincillo, Mengote, Tapia, Abayare, Pazon and Babon allege that: 1) they are incumbent public officials of the Municipality of Hinabangan, Samar; 2) the Honorable Court has discretion whether to effect a preventive suspension; 3) they did not receive valuable consideration from the winning bidder; 4) they were charged for failing to scrutinize the technical aspect of the bid which was fully explained in the judicial affidavit of accused Frincillo; 5) they are the only bread winners in their respective families; 6) the charges against them are weak; 7) they cannot influence the investigation because the records and evidence relative to these cases are in the possession of the public prosecutor; 8) even if they were already arraigned, the defect in the informations charging an erroneous offense still subsists; and 9) the evil sought to be avoided in imposing suspension *pendente lite* is no longer present since the Prosecution had already rested its case.

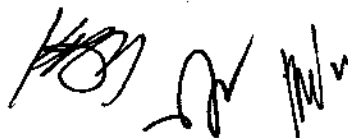
RULING

The Court does not find merit in the arguments of accused Frincillo, Mengote, Tapia, Abayare, Pazon and Babon.

Section 13 of R.A. No. 3019 states:

***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 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**

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.



in the meantime administrative proceedings have been filed against him.
(*Emphasis supplied*)

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

In the case before the Court, accused Frincillo, Mengote, Tapia, Abayare, Pazon and Babon admitted in their Comment dated May 28, 2019 that they are all incumbent public officials of the Municipality of Hinabangan, Samar. Accused Frincillo, Mengote, Tapia, Abayare, Pazon and Babon were arraigned on March 8, 2018 and entered a plea of “not guilty” to the charges in the four (4) informations filed against them. Having entered their plea, accused Frincillo, Mengote, Tapia, Abayare, Pazon and Babon admitted and acknowledged the validity of the informations.

Accused Frincillo, Mengote, Tapia, Abayare, Pazon and Babon are also deemed to have waived any objection they may have on the validity of the informations, 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.² Accused Frincillo, Mengote, Tapia, Abayare, Pazon and Babon did not allege any of the exceptions in their Comment dated May 28, 2019. There is also no doubt that accused Frincillo, Mengote, Tapia, Abayare, Pazon and Babon were charged with violation of Section 3(e) of R.A. No. 3019.

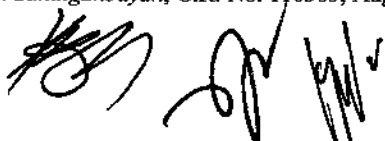
Once a court determines that the information charging a public officer with an offense under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, or any other offense involving fraud upon government or public funds or property is valid, the suspension *pendente lite* of the accused must follow as a matter of course.³ Preventive suspension is mandatory, and there are no ‘ifs’ and ‘buts’ about it.⁴ The court 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 continue committing malfeasance in office.⁵

² *Miranda v. Sandiganbayan*, G.R. No. 154098, July 27, 2005.

³ *Flores v. Hon. Layosa*, G.R. No. 154714, August 12, 2004.

⁴ *Villaseñor v. Sandiganbayan*, G.R. No. 180700, March 4, 2008.

⁵ *Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994.



The Supreme Court has repeatedly held that preventive suspension under Section 13 of R.A. No. 3019 is mandatory. Section 13 of R.A. No. 3019 is clear and explicit that there is hardly room for any extended court rationalization of the law. It mandates the suspension of a public official from office pending a criminal prosecution under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government.⁶

WHEREFORE, premises considered, accused Esmeralda H. Frincillo, Lesarbo L. Mengote, Raul R. Tapia, Renato M. Abayare, Roel A. Pazon and Alan A. Babon are ordered **SUSPENDED** *pendente lite*, for a period of ninety (90) days, as incumbent public officials of the Municipality of Hinabangan, Samar, or any other public position they may now or hereafter be holding.

Accused Esmeralda H. Frincillo, Lesarbo L. Mengote, Raúl R. Tapia, Renato M. Abayare, Roel A. Pazon and Alan A. Babon are ordered to **CEASE AND DESIST** from further performing and/or exercising the functions, duties, and privileges of their positions 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.

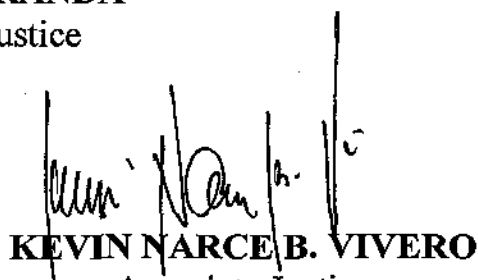
Let a copy of this Resolution be furnished the Secretary of the Department of the Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary of the DILG, or his duly authorized representative, is directed to inform the Court of the action taken thereon, the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

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice

⁶ *Beroña v. Sandiganbayan and People*, G.R. No. 142456, July 27, 2004.