



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

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

FOURTH DIVISION

MINUTES of the proceedings held on 23 January 2019.

Present:

JUSTICE ALEX L. QUIROZ

JUSTICE REYNALDO P. CRUZ

JUSTICE BAYANI H. JACINTO

Chairperson

Member

Member

SB-18-CRM-0001 – PEOPLE v. AUGUSTO L. SYJUCO ET AL.

The following resolution was adopted:

On 8 November 2018,¹ the Court required accused Arcadio H. Gorriceta to show cause why he should not be suspended *pendente lite* pursuant to Section 13 of Republic Act (R.A.) No. 3019.²

In his *Manifestation and Compliance*,³ accused Gorriceta argues that the issuance of an order for preventive suspension is discretionary upon the Court. He then points out that since he is now the incumbent representative of the 2nd Congressional District of Iloilo and no longer the Municipal Mayor of Pavia, Iloilo, the rationale for a preventive suspension no longer obtains. For this reason, the Court may, in the exercise of discretion, not issue such preventive suspension order against him.

Accused Gorriceta further avers that the numerous surgical procedures to treat his renal cell carcinoma with spinal metastasis, a severe medical condition, has generally limited his physical movement, as such, he could not be a "menace to the prosecution of the case nor influence or intimidate the witnesses." Citing *Enrile v. Sandiganbayan*,⁴ where special, humanitarian, and compelling circumstances were considered by the High Court as basis for its grant of bail, he prays for judicial leniency in the exercise of its discretion in resolving the present issue.

The prosecution did not file its comment or opposition.

¹ Order dated 8 November 2018, Records, Vol. III, p. 430.

² The said section of the Anti-Graft and Corrupt Practices Act reads: "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. x x x"

³ Dated 19 November 2018, Records, pp.16-20.

⁴ G.R. No. 213847, 18 August 2015.

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The preventive suspension of a public official charged with violation of R.A. No. 3019 is mandatory under Sec. 13 of the law, which clearly states that a public official shall be suspended 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 against the Government. This is ministerial upon the Court, even absent a motion from the prosecution praying for preventive suspension.⁵ As such, the Court possesses no discretion to determine whether the issuance of an order for preventive suspension is necessary to forestall the possibility that the accused may use his or her office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance. The presumption is that unless the accused is suspended, he or she may frustrate the prosecution of the case, commit further acts of malfeasance, or do both.⁶

On another point, while accused was charged as Municipal Mayor of Pavia, whereas he now occupies the position of Representative for the 2nd District of Iloilo, such change of office does not bar his preventive suspension. The mandate of Sec. 13 necessitates the suspension of any public official indicted upon a valid Information, regardless of their current position. Hence, in *Beroa v. Sandiganbayan (Fifth Division)*,⁷ the Supreme Court explained:

Petitioners contend that the Sandiganbayan has no legal basis to suspend them because they are presently occupying positions different from those under which the Information charged them. We have long settled this issue. In *Libanan v. Sandiganbayan*,⁸ the petitioner similarly claimed that the order of suspension, based on his indictment as a member of the Sangguniang Bayan, could no longer attach to him, as he was already the duly elected and incumbent Vice-Governor of Eastern Samar. Rejecting his thesis, the Court explained:

In *Deloso v. Sandiganbayan*, this Court rejected a similar argument advanced by Governor Deloso who, at the time of issuance of the suspension order, was already occupying the office of governor and not the position of municipal mayor that he held previously when charged with having violated the Anti-Graft Law. Prior to *Deloso*, in *Bayot v. Sandiganbayan*, the suspension of then Cavite Mayor Bayot was also sustained even as he was charged for acts committed as government auditor of the Commission on Audit.

⁵ *Flores v. Layosa*, G.R. No. 154714, 12 August 2004.

⁶ *Dela Cruz v. Sandiganbayan*, G.R. No. 161929, 8 December 2009, citing *Socrates v. Sandiganbayan*, G.R. Nos. 116259-60 and 118896-97, 20 February 1996.

⁷ G.R. No. 142456, 27 July 2004.

⁸ G.R. No. 112386, 14 June 1994.

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The Court reiterated this doctrine in *Segovia v. Sandiganbayan*⁹ in this wise:

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 in the original)

The resort to *Enrile* likewise has no merit. In *Enrile*, the Supreme Court was confronted with the propriety of granting bail, which concerns the guarantee that the accused would appear at the trial, or whenever so required by the trial court. Hence, Sen. Enrile's state of health was relevant for the Court's consideration. This is not the issue in the current motion.

As explained in *Beroa*, the purpose of the mandatory preventive suspension under the law is to prevent further acts of malfeasance while in office, the intimidation of witnesses, and the possibility of tampering with documentary evidence. It is to reinforce the principle that public office is a public trust. On this score, accused Gorriceta's physical health is of no moment, considering that the only relevant consideration for the Court in applying the legal mandate for preventive suspension is the fact that accused presently holds public office.

As to the duration of suspension, the Supreme Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days, in consonance with Presidential Decree No. 807¹⁰, now Sec. 52 of the Administrative Code of 1987.¹¹

WHEREFORE, in view of the foregoing, accused **Arcadio H. Gorriceta** is hereby suspended from his position as Representative of the 2nd District of Iloilo; and from any other public office which he may now or hereafter be holding, for a period of **ninety (90) days** from receipt of this Resolution.

⁹ G.R. No. 124067, 27 March 1998.

¹⁰ The Civil Service Decree.

¹¹ *Layus v. Sandiganbayan*, G.R. No. 134272, 8 December 1999.

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Let a copy of this Resolution be furnished the Office of the Honorable Speaker of the House of Representatives of the Philippines for the proper implementation of the order of preventive suspension on accused Arcadio H. Gorriceta. The said Office is requested to inform this Court of its action thereon within five (5) days from receipt hereof.

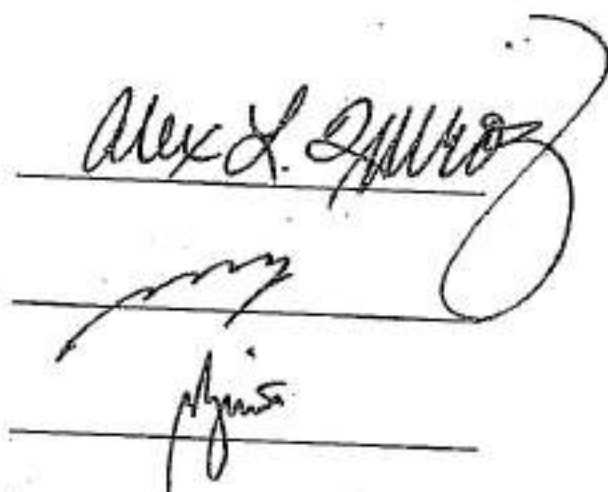
The suspension of the accused shall automatically be lifted upon expiration of the 90-day period from the implementation of this *Resolution*.

SO ORDERED.

QUIROZ, J., Chairperson

CRUZ, J.

JACINTO, J.



The block contains three handwritten signatures, each written over a horizontal line. The top signature is 'Alex L. Syfuco' in cursive. The middle signature is a stylized, illegible cursive mark. The bottom signature is 'Jacinto' in cursive.