



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

CERTIFIED TRUE COPY

ATTY. MARYRUTH MILO FERRER
Executive Clerk of Court III
SIXTH Division, SANDIGANBAYAN

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0337**
For: Violation of Section 3(e)
of R.A. 3019 as amended

- versus -

SB-18-CRM-0338 and 0339
For: Malversation (Art. 217 of the
Revised Penal Code)

EDGAR G. RAMA, ET AL.,
Accused.

Present :

FERNANDEZ, SJ, J., Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

JUL 04 2019

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RESOLUTION

FERNANDEZ, J.

For resolution is the suspension *pendente lite* of accused Nancy A. Catamco.

In a Resolution dated March 21, 2019,¹ pursuant to Rule VIII, Sec. 4 of the 2018 *Revised Internal Rules of the Sandiganbayan*,² the Court ordered accused Nancy A. Catamco to show cause why she should not be suspended *pendente lite* in accordance with Section 13 of Republic Act No. 3019.

¹ Record, Volume 5, p. 409.

² *Sec. 4. 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 said 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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On May 2, 2019, accused Catamco filed a *Compliance (To Show Cause Order dated March 21, 2019)*,³ claiming that there is no basis in placing her under preventive suspension. She argues:

1. The matter of placing her under preventive suspension should await the resolution of the Petition for Review she filed with the Supreme Court, questioning the validity of the Informations filed against her.
 - a. Section 13 of R.A. No. 3019 requires that the criminal prosecution be under a valid Information before the suspension of an accused public officer can be considered mandatory.
 - b. The matter of placing her under preventive suspension should await the outcome of her Petition for Review with the Supreme Court because the pendency of her Petition poses a prejudicial question on the validity of the Informations filed against her.
 - c. It would be unfair to place her under mandatory preventive suspension until her Petition is resolved.
 - d. The fact that the prosecution made no move to place her under preventive suspension indicates that the pendency of the Petition with the Supreme Court indeed poses a prejudicial question on the validity of the Informations filed against her.
2. Sec. 13 of Republic Act No. 3019 does not apply to her as she was charged in this case in her private capacity.
 - a. The Informations in this case categorically charge her for acts she allegedly committed in her capacity as a partner in Perzebros Company and not as a public officer or employee.
 - b. Section 13 of R.A. No. 3019 applies only to public officers who are criminally charged under a valid information for acts committed during their incumbency as a public officer.
 - c. The word *incumbent* refers to public officers who committed the offense while in office.
 - d. A private individual charged for violation of R.A. No. 3019 in conspiracy with public officers cannot

³ Dated May 2, 2019, received by the Court through registered mail on May 9, 2019; Record, Vol. 6, pp. 267-275.

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be subject of preventive suspension as there is no public office which she can be suspended from.

- e. The administrative proceedings mentioned in Section 13 of R.A. No. 3019 refer to administrative cases that accompany criminal cases against public officers arising from the same act/s or omissions subject of the criminal case committed during his incumbency or tenure. Thus, the inclusion of the phrase "unless in the meantime administrative proceedings have been filed against him" is a clear indication that Section 13 only covers public officers who are facing criminal prosecution during their incumbency in office.
3. The move to preventively suspend her is politically motivated.
 - a. She had already been arraigned in the year 2018 but the letter request for her suspension was made only this year, right before the start of the election period.
 - b. The People Against Corruption (PAC), in their letter request for suspension, singled her out and did not include all her other co-accused.
 - c. The fact that the prosecution did not move for her suspension only shows that the prosecution themselves see no need for her preventive suspension.

The Court finds accused Catamco's contention without merit.

Sec. 13 of R.A. No. 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 as 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.



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(underscoring supplied)

Under the aforequoted provision, suspension from public office is mandatory whenever a valid information charges an incumbent public officer with (1) violation of R.A. No. 3019; (2) violation of Title 7, Book II of the Revised Penal Code (RPC); (3) any offense involving fraud upon government; or (4) any offense involving fraud upon public funds or property.⁴

In this case, the Court finds all the requisites for the imposition of suspension *pendente lite*, pursuant to Sec. 13 of R.A. No. 3019, existing.

Accused Catamco is charged under three separate valid Informations for violation of Sec. 3(e) of R.A. No. 3019 and Malversation punishable under Art. 217 of the Revised Penal Code.

The issue on the validity of the Informations for cases filed against her had already been resolved when she filed a *Motion to Dismiss Cases and/or to Quash Informations*,⁵ and the Court considered but denied the same in the *Resolutions* dated August 7, 2018⁶ and October 12, 2018.⁷ Besides, by entering her plea of "not guilty",⁸ accused Catamco impliedly acceded to the validity of the Informations charging her with violation of Sec. 3(e) of R.A. No. 3019 and Malversation. Thus, in so far as this Court is concerned, there is no more question as to the validity of the Informations.

Accused contends that the pendency of her *Petition for Review* with the Supreme Court, assailing the *Resolutions* dated August 7, 2018 and October 12, 2018, poses a prejudicial question to the issue of the validity of the Informations, and necessarily, the matter of her preventive suspension should await the resolution of her *Petition for Review*.

The Court is not convinced.

The case of *Socrates v. Sandiganbayan, et al.*⁹ is enlightening on the matter:



⁴ *Bustillo v. Sandiganbayan*, G.R. No. 146217, April 7, 2006.

⁵ Dated June 1, 2018, Record, Vol. 1, pp. 498-528.

⁶ Denying the accused' *Motion to Dismiss the case and/or To Quash Informations*; Record, Vol. 2, pp. 439-453.

⁷ Denying the accused' *Motion for Reconsideration*; Record, Vol. 3, pp. 233-242.

⁸ Record, Vol. 3, p. 274.

⁹ 253 SCRA 773, 794-797 (1996).

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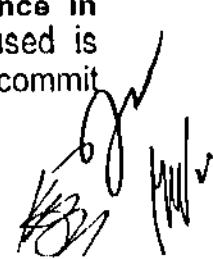
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This Court has ruled that under Section 13 of the anti-graft law, the suspension of a public officer is mandatory after the validity of the information has been upheld in a pre-suspension hearing conducted for that purpose. This pre-suspension hearing conducted to determine basically the validity of the information, from which the court can have a basis to either suspend the accused and proceed with the trial on the merits of the case, or withhold the suspension of the latter and dismiss the case, or correct any part of the proceeding which impairs its validity. That hearing may be treated in the same manner as a challenge to the validity of the information by way of a motion to quash

With the aforequoted jurisprudential authority as the basis, it is evident that upon a proper determination of the validity of the information, it becomes mandatory for the court to immediately issue the suspension order. The rule on the matter is specific and categorical. It leaves no room for interpretation. **It is not within the court's discretion to hold in abeyance the suspension of the accused officer on the pretext that the order denying the motion to quash is pending review before the appellate courts.**

Once the information is found to be sufficient in form and substance, then the court must issue the order of suspension as a matter of course. There are no ifs and buts about it. **This is because a preventive suspension is not a penalty.** 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. In view of this latter provision, the accused elective public officer does not stand to be prejudiced by the immediate enforcement of the suspension order in the event that the information is subsequently declared null and void on appeal and the case dismissed as against him. Taking into consideration the public policy involved in preventively suspending a public officer charged under a valid information, the protection of public interest will definitely have to prevail over the private interest of the accused. (*Bayot vs. Sandiganbayan, et al., G.R. Nos. 61776-61861, March 23, 1984, 128 SCRA 383*)

To further emphasize the ministerial duty of the court under Section 13 of Republic Act No. 3019, it is said that the court trying the case has neither discretion nor duty to determine whether or not a 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. The presumption is that unless the accused is suspended, he may frustrate his prosecution or commit

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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.

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Clearly, upon determination of the validity of the information, it becomes a ministerial duty on the part of the Court to immediately issue a suspension order against an accused public officer charged with cases enumerated in Sec. 13 of R.A. No. 3019. The Court is without any discretion to hold in abeyance the suspension of such accused public officer, even if the Court's determination of the validity of the Information was raised on appeal. Thus, this Court's duty to issue a preventive suspension order is not affected by the pendency of accused Catamco's *Petition for Certiorari* with the Supreme Court.

Since the requisites imposed by Sec. 3(e) of R.A. No. 3019 are present in this case, this Court is duty-bound to order the suspension of accused Catamco.


Accused Catamco's contention that Section 13 does not apply to her because she was charged in the Informations in her private capacity is likewise without merit.

Sec. 13 of R.A. No. 3019 is clear and unequivocal when it stated that **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 complex offense and in whatever stage of execution and mode of participation, is pending in court shall be suspended from office.

When the law used the words "any incumbent public officer", the law pertains to the *incumbent or current position* of the accused public officer and not to the position or capacity to which he was charged in the Information. Preventive suspension applies to any office the officer might be currently holding and not necessarily to the particular office, or in this case any capacity, to which he is charged.¹⁰

Section 13 is so clear that there is hardly room for any extended court rationalization of the law. The law unequivocally mandates the suspension of a public official from office pending a criminal prosecution

¹⁰ *Beroña v. Sandiganbayan*, 435 CRA 303, 307-308 [2004], citing *Segovia vs. Sandiganbayan*, 288 SCRA 328 [1998].



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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. Such preventive suspension is mandatory, and there are no 'ifs' and 'buts' about it.¹¹

WHEREFORE, premises considered, the Court orders the suspension *pendente lite* of accused NANCY A. CATAMCO as Governor of North Cotabato and from any other public positions she may now or hereafter hold for a period of ninety (90) days from receipt of this Resolution.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary is requested to inform the Court of the action taken thereon within fifteen (15) days from receipt hereof.

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

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹¹ *Beroña v. Sandiganbayan*.