



REPUBLIC OF THE PHILIPPINES

CERTIFIED PHOTOCOPY

Sandiganbayan

Quezon City

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

FOURTH DIVISION

MINUTES of the proceedings held on 6 May 2019.

Present:

JUSTICE ALEX L. QUIROZ

JUSTICE REYNALDO P. CRUZ

JUSTICE BAYANI H. JACINTO

Chairperson

Member

Member

The following resolution was adopted:

SB-18-CRM-0469 to 0470 - PEOPLE v. ADOLPH EDWARD G. PLAZA ET AL.

This resolves the following submissions relating to the Court's 15 March 2019 Order¹ requiring all incumbent accused public officers to show cause within ten (10) days why an order for suspension *pendente lite* should not be issued against them:

1. *Compliance Re: Show Cause Order with Accused Vehement Objection from their Preventive Suspension Pendente Lite*² dated 24 March 2019 filed by accused Maximo M. Gegato, Jr., Niceto M. Ranario, Celsa S. Sanchez, Arnold R. Calang, Andre G. Bustamante, Sofronio C. Raro, and Pamela D. Yucosing (accused Gegato, Jr. et al);
2. *Honest and Faithful Compliance and Motion (To Show Cause Why Accused Ronquillo Should Not Be Placed Under Preventive Suspension)*³ dated 25 March 2019 filed by accused Jesusimo L. Ronquillo; and
3. *Compliance on the Showcause Order with Serious Objection on Accused Roberto M. Natividad Preventive Suspension*⁴ dated 25 March 2019 filed by accused Roberto M. Natividad.

¹ Order dated 15 March 2019, Records, Vol. IV, pp. 30-31.

² Records, Vol. IV, pp. 134-147.

³ Id., pp. 155-159.

⁴ Id., pp. 181-187.

Accused's arguments:

Accused Gegato, Jr. et al. point out that since accused Plaza's Petition for *Certiorari*, which assails the validity of the *Informations*, is still pending with the Supreme Court; trial should be held in abeyance as a matter of judicial courtesy. In addition, they claim that they have a pending *Omnibus Motion to Quash Information and to Dismiss the Case (Malversation Case)*⁵ that has yet to be resolved by the Court.

Accused Ronquillo, for his part, states that he had previously served a sixth-month suspension without pay in the administrative case for Simple Neglect and Conduct Prejudicial to the Service docketed as OMB-C-A-16-0057. Said case stemmed from the same facts which brought about the present criminal cases. He was thereafter deemed resigned from government service until his election as *Sangguniang Bayan* member for the Municipality of Prosperidad, Province of Agusan del Sur.

He reiterates that he is not liable for the transactions subject of these cases, as in fact he was only found liable for Simple Neglect of Duty and Conduct Prejudicial to the Service. On the basis of said submission, he implores this Court to allow him to continue performing his regular duties, especially since he was "overwhelmingly elected" as councilor.

Accused Natividad, on the other hand, states that he adopted the Petition for *Certiorari* filed by accused Plaza during the 15 March 2019 hearing before this Court and adds that his refusal to enter his plea during his arraignment was intended to signify his continuing objection to the validity of the *Informations*. As with accused Ronquillo, he states that he was already suspended from service for six months without pay in the administrative case and that in the decision therein the OMB held that it failed to find the elements of corruption against him. In line with his previous suspension, and appealing to humanitarian considerations, he prays that he should not be made to suffer suspension for a second time. Finally, he states that —

x x x the prosecution still has to discharge its burden to: (1) overcome the presumption of innocence which accused enjoy; (2) his adoption of the Petition for *Certiorari* before the Supreme Court for reasons of "inordinate delay" is manifestation of continuing objection to the information being filed; (3) conspiracy cannot be established (sic) since accused did not favor any personality for purposes of establishing awarding the contract;

⁵ Records, Vol. IV, pp. 46-A to 46-J.

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Finally, accused Cellan, Jr.,⁶ Udad, and Quiban⁷ allege that they have already retired from government service.

RULING

Section 4, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan⁸ provides:

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.

The preventive suspension of a public official charged with violation of R.A. No. 3019 is mandatory under Sec. 13 of the law,⁹ which clearly states that a public official shall be suspended from office pending a criminal prosecution under Republic Act (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.¹⁰ 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.¹¹

This preventive measure applies even if the accused currently occupies a public office different from the one indicated in the information

⁶ Supra at note 3.

⁷ Supra at note 4.

⁸ A.M. No. 13-7-05-SB.

⁹ 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. 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.

¹⁰ *Flores v. Layosa*, G.R. No. 154714, 12 August 2004.

¹¹ *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.

filed before the Court. The mandate of Sec. 13 necessitates the suspension of any public official indicted upon a valid Information, regardless of the current position held. Hence, in *Beroa v. Sandiganbayan (Fifth Division)*,¹² 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*, 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.

The Court reiterated this doctrine in *Segovia v. Sandiganbayan* 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; citations omitted)

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.

¹² G.R. No. 142456, 27 July 2004.

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Pendency of accused Plaza's
Petition for *Certiorari* before the
Supreme Court.

Accused Gegato, Jr., et al. and Natividad argue that preventive suspension can only be properly ordered under a valid Information and thus rely on the pendency of accused Plaza's Petition for *Certiorari*¹³ with the Supreme Court assailing the Court's 7 September 2018¹⁴ and 9 January 2019¹⁵ Resolutions in arguing that the validity of *Informations* in these cases has yet to be resolved with finality.

While the Court recognizes the principle of judicial courtesy, this is to be weighed against the directive of Sec. 7, Rule 65 of the Rules of Court, which plainly mandates that the filing of a petition under the same rule would not interrupt the course of the principal case unless a temporary restraining order or writ of preliminary injunction is issued against the respondent court for the said purpose.¹⁶ In these cases, a reasonable period has elapsed from the filing of accused's Petition on 11 February 2019 to date. However, the Supreme Court has not issued any injunctive writ. Thus, at this juncture the mere fact that the Petition is still pending with the Supreme Court should not serve to delay the proceedings before this Court.

In any case, the Court already resolved the validity of the present *Informations* when it resolved the motions to dismiss filed by accused-moyants. The same need not be addressed again, keeping in mind the Omnibus Motion Rule under Sec. 1, Rule 9 of the Rules of Court,¹⁷ in relation to Sec. 8 of Rule 15¹⁸ thereof.

¹³ Docketed as G.R. No. 244184-85.

¹⁴ Records, Vol. III, pp. 48-A to 48-I.

¹⁵ Id., pp. 377-386.

¹⁶ Said section reads: SECTION 7. *Expediting proceedings; injunctive relief*. — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.

¹⁷ Which provides: "Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim."

¹⁸ Which provides: "Sec. 8. Omnibus motion. — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived."

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Resolution of the administrative cases against accused Ronquillo and Natividad does not affect the issuance of a preventive suspension order.

In *Villaseñor v. Sandiganbayan (5th Division)*¹⁹ the Supreme Court had occasion to clarify that criminal and administrative cases are separate and distinct from one another, and that suspension *per* an administrative case does not affect the Court's duty to issue a preventive suspension order in a criminal case; this is even if both cases stem from the same facts:

It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. Verily, administrative cases may proceed independently of criminal proceedings.

Socrates v. Sandiganbayan, citing the Court's pronouncements in *Luciano v. Provincial Governor*, recounted:

The Court then hastened to clarify that such a view may not be taken as an encroachment upon the power of suspension given other officials, reiterating in the process that a line should be drawn between administrative proceedings and criminal actions in court, that one is apart from the other. . . . (Underscoring supplied)

Based on the foregoing, criminal actions will not preclude administrative proceedings, and vice-versa, insofar as the application of the law on preventive suspension is concerned. (citations omitted)

Based on the foregoing, nothing prevents the Court from imposing preventive suspension on herein accused.

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. 807*,²⁰ now Sec. 52 of the *Administrative Code of 1987*.²¹

¹⁹ G.R. No. 180700, 4 March 2008.

²⁰ THE CIVIL SERVICE DECREE.

²¹ *Layus v. Sandiganbayan*, G.R. No. 134272, 8 December 1999.

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WHEREFORE, in view of the foregoing, accused -

- (i) Maximo M. Gegato, Jr., Provincial Department Head, Provincial Agricultural Office;
- (ii) Niceto M. Ranario, Assistant Department Head, Provincial Accounting Office;
- (iii) Celsa S. Sanchez, Provincial Treasurer;
- (iv) Arnold R. Calang, Provincial Agricultural Office;
- (v) Andre G. Bustamante, Security Agent I;
- (vi) Sofronio C. Raro, Storekeeper II, Provincial Engineering Office;
- (vii) Pamela D. Yucosing, Assistant Department Head, Provincial Engineering Office;
- (viii) Jesusimo L. Ronquillo; *Sanggunian Bayan* member, Municipality of Proseperidad; and
- (ix) Roberto M. Natividad, Executive Assistant IV, Governor's Office,

all of Agusan del Sur, are hereby preventively suspended from the public offices they currently occupy for a period of **ninety (90) days** from receipt of this Resolution.

Let a copy of this Resolution be furnished to the Secretary of Finance for the implementation of the order of suspension on accused Celsa S. Sanchez, and the Department of Interior and Local Government for the implementation of the order of suspension on the rest of the accused. Said offices are further requested to inform this Court of the date the accused started serving their respective suspensions *pendente lite* and the date of their termination.

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.

