



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

SB-10-SCA-0005
(Crim. Case No. 09-270-244)

- versus -

FOR: Petition for *Certiorari* under
Rule 65 of the Rules of Court

HON. TITA BUGHAO ALISUAG,
Presiding Judge
Regional Trial Court (RTC)
National Capital Judicial Region
Branch 1, Manila

PRESENT:
Quiroz, *J.*, Chairperson
Cruz, *J.*
Jacinto, *J.*

ERNESTO C. EVASCO, SR.,
Respondents.

PROMULGATION:
September 7, 2018 ant

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DECISION

QUIROZ, J.:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court filed by petitioner on November 3, 2010,¹ assailing the Orders dated March 16, 2010² and July 19, 2010³ of the Regional Trial Court, Branch 1, Manila City.

The antecedents are as follows:

On October 1, 2009, Information for Falsification of Public Document was filed against Ernesto C. Evasco, Sr., the incumbent *Barangay* Captain of *Barangay* 500, Zone 49, District IV, Sampaloc City, Manila. The case was docketed as Criminal Case No. 09-270244.

On October 21, 2009, Evasco was arraigned and entered a plea of Not Guilty.

Shortly thereafter, on November 9, 2009, the prosecution moved for the suspension pendente lite of accused Evasco.⁴ Respondent judge, however, denied the prosecution's motion in its Order dated March 16, 2010. The prosecution moved for reconsideration on April 7, 2010,⁵ but the motion was similarly denied in the Order dated July 19, 2010.

¹ Records, pp. 1 - 22.
² Records, pp. 23 - 24.
³ Records, pp. 25 - 26.
⁴ Records, pp. 36 - 40.
⁵ Records, pp. 44 - 57.

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Thus, the present petition.

Briefly, the petition assails the respective *Orders* dated March 16, 2010 and July 19, 2010, claiming that public respondent acted with grave abuse of discretion in denying the prosecution's *Motion to Suspend Accused Pendente Lite* and *Motion for Reconsideration*.

In denying the prosecution's motion to place the accused under preventive suspension, respondent judge ruled that it has no power to suspend the accused *pendente lite* in view of Section 63 of the Republic Act No. 7160 and held as follows, *viz* -

This Court has jurisdiction to try this criminal case filed against the Accused who is a barangay chairman pursuant to Sec. 20 RA. 7691 in relation to RA 6758. **This jurisdiction however, does not partake of imposing preventive suspension on said Accused, barangay chairman, as the same is lodged before another office pursuant to Sec. 63 of the Local Code of 1991.**

In the present case, the Accused who is a barangay chairman is an elected official, facing a criminal case not an administrative case.

During the pendency of this case, the Court can only act on motion of the Accused pertaining to his bail, but not an order for preventive suspension. The Court has no authority to act on the instant motion, as the same is lodged before another entity/office, who has primary jurisdiction.

According to public respondent, the suspension of the accused is an executive act and cited the annotation to the case of *Gonzaga v. Sandiganbayan, et.al.*⁶ entitled, "*Suspension of Public Officers Accused of Crimes, Should It Be Judicial or Executive Act?*,"⁷ as basis therefor.

We find the petition impressed with merit.

There are three separate provisions concerning the preventive suspension of a public officer - Section 24 of Republic Act No. 6770; Section 63 of Republic Act No. 7160; and Section 13 of Republic Act No. 3019.

Preventive suspension under **Section 24 of Republic Act No. 6770** may be exercised by the Ombudsman or his Deputy, as part of its authority in the conduct of administrative investigations, while the power to place a public officer under preventive suspension pursuant to **Section 63 of Republic Act No. 7160** belongs to the President, the governor, or the mayor, as the case may be, in cases where an administrative complaint has been filed with the Office of the President, the *sangguniang panlalawigan*, the *sangguniang panlungsod*, or *sangguniang bayan*.

⁶ G.R. No. 96131, September 6, 1991 (201 SCRA 417)

⁷ 201 SCRA 429 - 436.

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Section 13 of Republic Act No. 3019, on the other hand, may be exercised by a court of law, whenever a public officer has been criminally charged for any offense involving fraud upon government or public funds or property.

It is clear that Section 24 of R.A. No. 6770 and Section 63 of R.A. No. 7160 apply only in administrative cases; thus, the 1995 case of *Hagad v. Gozo-Doble, et.al.*⁸ and the 1999 case of *Garcia v. Mojica, et.al.*⁹ where the Supreme Court had been asked to clarify the issue of the applicability of the 60-day period of preventive suspension under R.A. No. 7160 and the 6-month period of preventive suspension under R.A. 6770.

The mandatory duty on the part of respondent judge to place an accused under preventive suspension on the strength of Section 13 of R.A. No. 3019 is unmistakable and to have refused to make a determination of its propriety, on the basis of a mere academic opinion, constitutes grave abuse of discretion. By grave abuse of discretion is meant, "*such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.*"¹⁰

To emphasize the positive duty owing to the *court a quo*, the relevant portion on suspension *pendente lite* under Section 13 is hereby reproduced hereunder, *viz* -

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 Seven, 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. x
x x

(emphasis supplied)

WHEREFORE, premises considered, herein Petition for Certiorari filed by petitioner People of the Philippines, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor, is hereby **GRANTED**. The *Order* dated March 16, 2010 and the *Order* dated July 19, 2010, both issued by Hon. Tita Bughao Alisuag in Criminal Case No. 09-270-244 of the Regional Trial Court, Branch 1, Manila, are hereby **NULLIFIED** and **SET ASIDE**.

⁸ G.R. No. 108072, December 12, 1995.

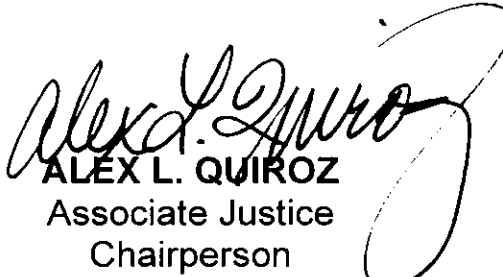
⁹ G.R. No. 139043, September 10, 1999.

¹⁰ *Cirilo Alafriz v. Mariano Nable, et.al.*, G.R. No. L-47780, June 10, 1941.

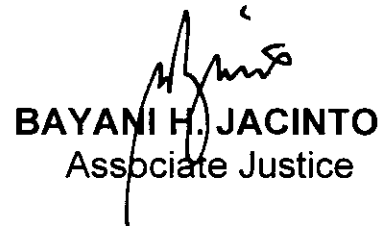
The public respondent is hereby directed to conduct the necessary proceeding to determine the propriety of placing accused Ernesto C. Evasco, Sr. under suspension *pendente lite*.

SO ORDERED.

Quezon City, Philippines, September 5, 2018.

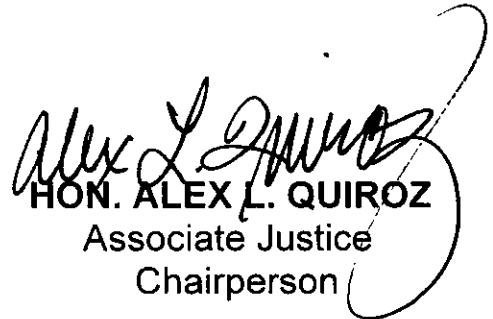

ALEX L. QUIROZ
Associate Justice
Chairperson


REYNALDO P. CRUZ
Associate Justice


BAYANI H. JACINTO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


HON. ALEX L. QUIROZ
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


HON. AMPARO M. CABOTAJE-TANG
Presiding Justice

