



Republic of the Philippines

SANDIGANBAYAN

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CRIM. CASE NOS. SB-16-CRM-0191-0234
For: Violation of Sec. 89 of PD No. 1445
or the State Audit Code

CRIM. CASE NO. SB-16-CRM-0235
For: Malversation

PRESENT:

PONFERRADA, J., *Chairperson*
MIRANDA &
MUSNGI, JJ.

**RHUSTOM LAMBAYONG
DAGADAG,**

Accused.

Promulgated:

AUG 30 2017

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RESOLUTION

PONFERRADA, J.:

This refers to accused Rhustom Lambayong Dagadag's *Omnibus Motion for Reconsideration (to the grant of Suspension Pendente Lite) and/or Motion to Dismiss* dated June 13, 2017, and the prosecution's *Opposition (Re:*

Omnibus Motion for Reconsideration and/or Motion to Dismiss) dated July 19, 2017.

After a restudy, the Court finds no valid reason to reconsider its previous action and grant the motion for reconsideration and hereby reiterates the pertinent portions of the assailed Resolution, to wit:

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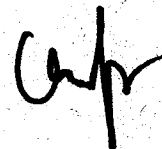
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“The authority of this Court to order the preventive suspension of an incumbent public official charged with violation of the provisions of R.A. No. 3019, as amended, or **under Title VII, Book II of the Revised Penal Code like Malversation of Public Funds as charged against accused herein**, or for any offense involving fraud upon government or public funds or property, has both legal and jurisprudential support. Section 13 of R.A. 3019, as amended provides:

“Section 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 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 judgement, 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.

In the event that such convicted officer, who may have been separated from the service has already received such benefits he shall be liable to retribute the same to the government. (As amended by BP Blg. 195, March 16, 1982).”



In *Segovia v. Sandiganbayan*, the Supreme Court reiterated that –

“The validity of Section 13, RA 3019, as amended – treating of the suspension pendente lite of an accused public officer – may no longer be put at issue, having been repeatedly upheld by this Court. As early as 1984, in Bayot v. Sandiganbayan (128 SCRA 383 [1984]) the Court held such suspension was not penal in character but merely a preventive measure before final judgment; hence, the suspension of a public officer charged with one of the crimes listed in the amending law, committed before said amendment, does not violate the constitutional provision against an ex post facto law. The purpose of suspension is to prevent the accused public officer from frustrating or hampering his prosecution by intimidating or influencing witnesses or tampering with documentary evidence, or from committing further acts of malfeasance while in office (Bolastig v. Sandiganbayan, 235 SCRA 103 [1994]). Substantially to the same effect was the Court’s holding in 1994, in Gonzaga v. Sandiganbayan (201 SCRA 417 [1991]), that preventive suspension is not violation of the Constitution as it is not a penalty; and a person under preventive suspension remains entitled to the constitutional presumption of innocence since his culpability must still be established.

“xxx xxx xxx.”

“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. xxx 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.”

Once the Information is found to be sufficient in form and substance, is it is the ministerial duty of the Court to issue a preventive suspension order and “there are no ifs and buts about it”.



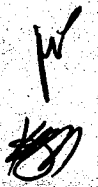
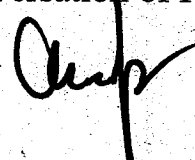
Thus, to grant the motion and to suspend the accused *pendente lite*, two (2) requisites must be present: 1.) the Information must be valid; and 2.) the offense charged is a covered offense, i.e., it is a violation of R.A. 3019, as amended, or an offense under Title VII, Book II of the Revised Penal Code like Malversation, or any offense involving fraud upon government or public funds or property.

It cannot be disputed that the Information for Malversation against the accused is valid. In fact, the accused has been arraigned and entered a plea of "Not Guilty" to the said Information against him thereby admitting and acknowledging its validity. It likewise cannot be disputed that the offense of Malversation of Public Funds charged against the accused is a covered offense as it is expressly stated in the afore-quoted Section 13 of R.A. No. 3019. When an accused is charged with Malversation, it is not required that there be fraud. Fraud is required for other offenses involving public or government funds or property.

With the presence of the two (2) requisites, the preventive suspension of the accused must follow as a matter of course. It is mandatory and as repeatedly held by the Supreme Court, there are no "ifs" and "buts" about it. The Court has neither the discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate the prosecution or continue committing malfeasance in office. Moreover, the accused public official may be suspended *pendente lite* even if he is holding a position different from the position held when he allegedly committed the offense charged.

It must be stressed, however, that suspension *pendente lite* is not a determination of guilt or innocence of the accused as such guilt or innocence will be subject to the evidence to be presented in the trial of the case. Likewise, it must be emphasized that the suspension *pendente lite* is not a penalty because it is not imposed as a result of a judicial proceeding which determines the guilt of the accused. In fact, if acquitted, the accused official concerned will be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension. The accused should not feel or believe that he is indispensable for public service in the province of Kalinga as there are other capable public/provincial officials who may act in his stead during his absence or suspension.

To recapitulate, considering the validity of the Information and that the accused is charged with Malversation of Public Funds



as defined and penalized under Article 217 of Title VII, Book II of the Revised Penal Code, covered by Section 13 of R.A. No. 3019, it is mandatory for the Court, and there are no “ifs” and “buts” about it, to issue the corresponding preventive suspension order against him.”

xxx xxx xxx

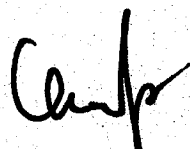
As regards the Motion to Dismiss, the Court is not inclined to give it due course it appearing that accused Rhustom Lambayong Dagadag has already been arraigned and pleas of “Not Guilty” were made and entered into the records of these cases on March 16, 2017. Under the Revised Rules of Criminal Procedure, a motion to dismiss which is, and should be, treated as a motion to quash, as in this case, should be filed before the accused enters his plea or before arraignment.¹ Besides, the accused had already filed an Omnibus Motion to Quash the Information and/or Motion to Dismiss on July 18, 2016, which the Court denied in its Resolution dated December 8, 2016, and his Motion for Reconsideration on December 29, 2016, was also denied in the Court’s Resolution dated February 8, 2017.

However, the accused shall not be precluded from raising and/or proving his newly cited ground of prescription during the trial on the merits.²

WHEREFORE, the Omnibus Motion for Reconsideration and/or Motion to Dismiss is **DENIED**.

SO ORDERED.

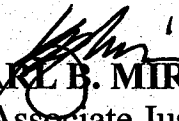
¹ Sec. 1, Rule 117, Revised Rules on Criminal Procedure
² Sec. 9, Rule 117, Revised Rules on Criminal Procedure



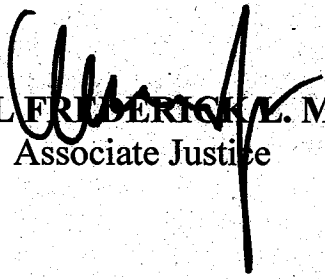


RODOLFO A. PONFERRADA
Associate Justice
Chairperson

WE CONCUR:



KARL B. MIRANDA
Associate Justice



MICHAEL FREDERICK L. MUSNGI*
Associate Justice

* Special Member in view of the vacancy in the Sixth Division, per Administrative Order No. 124-2017 dated April 4, 2017.