



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff,

SB-17-CRM-0057
 For: Violation of Section 3(e) of
 R.A. No. 3019

- versus -

**NELSON C. DAVID, JOCELYN B.
 LINAO, FELICIDAD I. CRUZ, and,
 ROLANDO L. FLORES,**
 Accused.

PEOPLE OF THE PHILIPPINES,
 Plaintiff,

SB-17-CRM-0058
 For: Violation of Section 3(g), R.A.
 No. 3019

- versus -

NELSON C. DAVID,
 Accused.

Present:
FERNANDEZ, SJ, J.
 Chairperson
MIRANDA, J. and
MUSNGI, J.*

Promulgated:

NOV 23 2017

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RESOLUTION

FERNANDEZ, SJ, J.

For resolution is the *Motion to Suspend Accused Pendente Lite*¹ pursuant to Section 13, Republic Act No. 3019,² as amended.

* Per Administrative Order No. 124-2017 dated April 4, 2017, Special Member in view of the vacancy in the Sixth Division. The *Motion* was submitted for resolution upon receipt by the Court of the *Comment/Opposition (To the Motion to Suspend)* filed by accused Linao, Cruz and Flores on September 29, 2017.

¹ Dated August 9, 2017, filed on August 11, 2017; Record, pp. 251-254.

² *Anti-Graft and Corrupt Practices Act*

RESOLUTION

People vs. David, et al.

Criminal Case Nos. SB-17-CRM-0057 to 0058

Page 2 of 6

X-----X

The prosecution seeks to place under suspension *pendente lite* the following accused:

Accused	Position/Designation	Agency/Office
1. Jocelyn B. Linao	Municipal Assessor	Limay, Bataan
2. Felicidad I. Cruz	Municipal Treasurer	Limay, Bataan
3. Rolando I. Flores	Employee	Department of Public Works and Highways-Bataan 1 st District Engineering Office ³

Citing *Bolastig vs. Sandiganbayan*,⁴ the prosecution contends that suspension *pendente lite* under Section 13, R.A. No. 3019 is mandatory when a public officer is charged under a valid information for violation of R.A. No. 3019, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds.⁵

On September 29, 2017, accused Linao, Cruz and Flores filed their *Comment/Opposition (To the Motion to Suspend)*.⁶

RULING

The prosecution's *Motion to Suspend Accused Pendente Lite* is granted. The conditions to place accused Linao, Cruz and Flores under preventive suspension are present, *i.e.*, a) accused Linao, Cruz and Flores are incumbent public officials; and, b) they are charged under a valid information for violation of R.A. No. 3019.

Accused Linao, Cruz and Flores are incumbent public officials.

In their *Comment/Opposition*, accused Cruz and Flores did not deny that they are incumbent government officials. They merely claimed that they had already been "transferred/recalled to another office as early as year 2010." The Certification dated August 17, 2017⁷ issued by OIC-District Engineer Erlindo Flores, Jr., attached as Annex A to accused Linao, Cruz and Flores'

³ Motion to Suspend Accused Pendente Lite dated August 9, 2017, p. 1; Record, p. 251.
⁴ 235 SCRA 103 [1994].
⁵ Motion to Suspend Accused Pendente Lite dated August 9, 2017, p. 2; Record, p. 252.
⁶ Dated September 25, 2017; Record, pp. 276-280.
⁷ Record, p. 279.

RESOLUTION

People vs. David, et al.

Criminal Case Nos. SB-17-CRM-0057 to 0058

Page 3 of 6

X-----X

Comment/Opposition (To the Motion to Suspend), states that accused "Engr. Rolando L. Flores, Engineer III was recalled back to report to this Office [Department of Public Works and Highways, Bataan First District Engineering Office]."

Similarly, accused Linao did not deny that she is an incumbent official. Instead, she, together with accused Cruz and Flores, stated that they "are ordinary officers xxx,"⁸

It appears from the foregoing that the three accused impliedly admitted that they are incumbent public officials. Hence, the first condition is present.

Accused Linao, Cruz and Flores are charged under a valid Information for violation of R.A. No. 3019.

Accused Linao, Flores and Cruz have been arraigned; and they have entered their respective pleas to the offenses charged in the Information.⁹

Having entered their pleas, accused Linao, Cruz and Flores are deemed to have waived any objection they may have on the validity of the Information under which they are charged, except on the following grounds: 1) the information charges no offense; 2) the trial court has no jurisdiction over the offense charged; 3) the penalty or the offense has been extinguished; and 4) double jeopardy has attached.

In *Miranda vs. Sandiganbayan*,¹⁰ the Supreme Court stressed:

xxx It is basic that entering a plea waives any objection the petitioner may have to the validity of the information except on the following grounds: (1) the information charges no offense; (2) the trial court has no jurisdiction over the offense charged; (3) the penalty or the offense has been extinguished; and (4) double jeopardy has attached. Objections to the sufficiency of the allegations in the Amended Information do not fall among the exceptions to the rule. They fall under the objection that the information "does not conform substantially to the prescribed form. "Needless to state, the petitioner has by his acts acquiesced to the validity and sufficiency of the Amended Information."¹¹ xxx xxx xxx

⁸ Comment/Opposition (To the Motion to Suspend) dated September 25, 2017, p. 2; Record, p. 277.
⁹ Certificates of Arraignment all dated August 1, 2017; Record, pp. 245-247; Order dated August 1, 2017; Record, p. 247-A.
¹⁰ 464 SCRA 165 [2005].
¹¹ At p. 187. Underscoring supplied.

RESOLUTION

People vs. David, et al.

Criminal Case Nos. SB-17-CRM-0057 to 0058

Page 4 of 6

X-----X

Hence, the second requirement, a valid information under R.A. No. 3019 or under Title VII, Book II of the Revised Penal Code, is herein present.

Accused Linao, Cruz and Flores' arguments for the denial of the *Motion to Suspend Accused Pendente Lite* are without merit. They contend:

- a. The first objective of preventive suspension, "to prevent accused from using his office to intimidate witness or frustrate his prosecution," does not anymore apply to accused Cruz and Flores as both had already been transferred/recalled to other offices as early as 2010;
- b. Accused are ordinary officers and incapable by will or any means to perpetuate the evils sought to be avoided by law or jurisprudence;
- c. As to the second objective of suspension, "to prevent the commission of further acts of malfeasance," accused express their willingness, and, undertake to post a bond, as and by way of commitment, that they will not commit acts or further acts of malfeasance or any unlawful activity.¹²

First, it is settled that preventive suspension under Section 13, of R.A. No. 3019 applies to any office the officer is currently holding and not necessarily to the particular office in relation to which he is charged.¹³

Second, accused' claim that they are incapable to perpetrate the evils sought to be avoided by law or jurisprudence is not novel. In *Talaga vs. Sandiganbayan*,¹⁴ the Supreme Court rejected therein petitioner's plea for the Court "to first look into the circumstances of the case and thereafter determine the propriety of issuing a suspension order." The High Court said that the theory that the "environmental circumstances" of the case should first be explored has no leg to stand on.¹⁵ The pronouncement of the Supreme Court in *Segovia vs. Sandiganbayan*¹⁶ is likewise apropos.

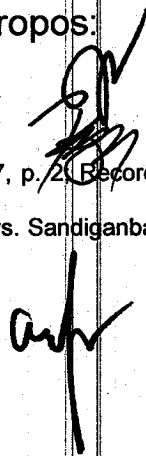
¹² Comment/Opposition (To the Motion to Suspend) dated September 25, 2017, p. 2, Record, p. 277, citing *Bolastig vs. Sandiganbayan*, *supra*.

¹³ *Beroña vs. Sandiganbayan*, 435 SCRA 303, 307-308 [2004], citing *Segovia vs. Sandiganbayan*, 288 SCRA 328 [1998].

¹⁴ 570 SCRA 622 [2008].

¹⁵ At pp. 629-630.

¹⁶ *Supra*



RESOLUTION

People vs. David, et al.

Criminal Case Nos. SB-17-CRM-0057 to 0058

Page 5 of 6

X-----X

Indeed that the theory of "discretionary suspension" should still be advocated at this late date, despite the "mass of jurisprudence" relevant to the issue, is little short of amazing, bordering on contumacious disregard of the solemn magisterial pronouncements of the Highest Court of the land.¹⁷

The Supreme Court has repeatedly held that preventive suspension under Section 13, R.A. No. 3019 is mandatory, and there are no 'ifs' and 'buts' about it. The Supreme Court said that Section 13, R.A. No. 3019 is so clear and explicit that there is hardly room for any extended court rationalization of the law. It unequivocally mandates the suspension of a public official 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 on government.¹⁸

WHEREFORE, the *Motion to Suspend Accused Pendente Lite* is GRANTED. The Court orders the suspension *pendente lite*, for a period of ninety (90) days, of the following accused:

1. **Jocelyn B. Linao** as Municipal Assessor of Limay, Bataan;
2. **Felicidad I. Cruz** as Municipal Treasurer on detail at the Office of the Provincial Treasurer of Bataan; and,
3. **Rolando Flores** as Engineer III at the Department of Public Works and Highways Bataan First District Engineering Office,

and from any other public position the accused may now or hereafter hold. Accused Linao, Cruz and Flores shall immediately cease and desist from performing the functions of their respective offices upon the implementation of this *Order of Preventive Suspension*. The suspension of the accused shall automatically be lifted upon the expiration of the 90-day period from the implementation of this resolution.

¹⁷ At p. 336.

¹⁸ *Berofia vs. Sandiganbayan*, *supra*, at p. 307.

RESOLUTION

People vs. David, et al.

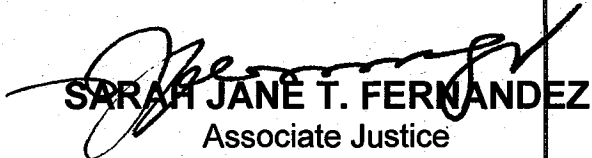
Criminal Case Nos. SB-17-CRM-0057 to 0058

Page 6 of 6

X-----X

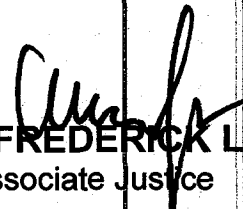
Let a copy of this Resolution be furnished the Secretaries of the Department of the Interior and Local Government,¹⁹ Department of Finance,²⁰ and Department of Public Works and Highways,²¹ for the implementation of this order of suspension. The Secretaries of the DILG, the DOF, and, the DPWH are ordered to inform the Court of the action taken thereon within fifteen (15) days from receipt hereof.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice

¹⁹ With respect to accused Linao.

²⁰ With respect to accused Cruz.

²¹ With respect to accused Flores.