



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-18-CRM-0275 to 0276

For: Violation of Sec. 3,
RA 3019, as amended
and Violation of Sec. 5,
in relation to Sec. 9 of
RA No. 8048

-vs-

GENEVIVE GUMBAN LIM-REYES
Accused.

Present:

LAGOS, J., Chairperson
MENDOZA-ARCEGA, J.,
and MAÑALAC-CORPUS, J.

Promulgated:

August 10, 2018 *lal*

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RESOLUTION

MENDOZA-ARCEGA, J.:

The prosecution, through the Office of the Special Prosecutor, filed a Motion to Suspend *Pendete Lite* on July 10, 2018¹. In the said motion, the prosecution prays for the suspension of the accused, Genevive Gumban Lim-Reyes, incumbent Mayor

¹ Record, pages 334-337.

lal

of the Municipality of Caluya, Antique, in accordance with Section 13 of RA No. 3019, as amended, for a period of ninety (90) days.

On July 31, 2018, the accused, through counsel, filed an Opposition to Motion to Suspend *Pendente Lite*², stating among others that: 1) the Information for Violation of Sec. 3 (e) is invalid for alleging two (2) offenses in violation of constitutional rights of the accused and; 2) the alleged coconut tree cutting violation does not involve graft and fraud, thus the accused cannot be placed under suspension *pendent lite*. In her prayer, she pleads for the dismissal of the present case on ground of invalid Information and denial of the prosecution's subject motion.

Thus, this resolution.

Section 13 of RA 3019 as amended, states:

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 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 a 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.

A perusal of the foregoing provision of law lays down two requirements for its application. The first requirement is a criminal prosecution of any public officer under a valid information and the second requirement is a pending criminal prosecution under the provisions of RA 3019 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 a complex offense and in whatever stage of execution and mode of participation.

Two Informations were filed by the Office of the Special Prosecutor against herein accused before this Court. The first one is for Violation of Sec. 3 (e) of RA 3019, as amended (SB-18-CRM-0275) and for Violation of Sec. 5, in relation to Sec. 9 of RA 8048 (SB-18-CRM-0276).

It is settled that the present motion is not applicable to the second case, SB-18-CRM-0276, since the offense as described and contained in the Information³ is not included among those crimes mentioned in the above-mentioned provision.

² Record, pages 352-357.

³ Record, pages 1-3, (SB-18-CRM-0276).

The accused, in opposition to the present motion argues that the Information for Violation of Sec. 3 (e) of RA 3019, as amended, is invalid for alleging two (2) offenses, in violation of the constitutional right of the accused to informed of the nature and cause of accusations against him. In particular, the accused claims that the body of the Information alleged that the accused cut or caused the cutting of coconut trees owned by the private complainant Juliet A. Ramos and in addition, the Information further alleges that the offender was without authority to cut the said coconut trees from the Philippine Coconut Authority. The accused maintains that the aforementioned allegations in the Information, constitute all the elements of the crime of Violation of Sec. 5, in relation to Sec. 9 of RA8048, otherwise known as Coconut Preservation Act of 1995. In effect, the accused claims that she may also be convicted under the said law.

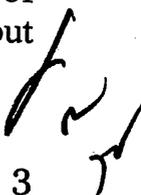
The Court is not convinced.

Duplicity or multiplicity of offense means a single Information charges more than one offense. Section 13 of Rule 110 of the Rules of Court states:

Section 13. *Duplicity of the offense.* — A complaint or information must charge but one offense, except when the law prescribes a single punishment for various offenses. (13a)

The Rule prohibits the filing of an Information which charges more than one offense, however, in the present case, the prosecution charged the accused with two (2) offenses, contained in 2 (two) separate Informations, with each Information charging only one offense, which makes the allegation of the accused untenable.

It has been ruled that a single act might constitute two or more distinct violation of the provisions of law which justifies a prosecution for more than one offense. As applied to the present case, the Information filed by the prosecution, particularly SB-18-CRM-0275, did not charge more than one offense. The Information charged only the offense of Violation of Sec. 3 (e) of RA 3019, as amended. The prosecution, in describing or specifying the crime committed made a narration of facts, constituting the alleged violation. Put it differently, the Information in order to completely inform the accused of its allegations, specified the particular act committed or omitted which constituted the offense. Moreover, as clearly alleged by the prosecution, the offense committed is in relation to office, with the attendance of evident bad faith, manifest impartiality and/or gross inexcusable negligence, which caused undue injury to one Juliet Ramos. The allegation of summary cutting of coconut trees without permit or compliance to the legal process is not intended to confuse the accused of the nature of the accusations against her but is merely a description of the act allegedly committed by the accused. Furthermore, there is no harm in including the said allegation, considering that there is a separate Information filed for Violation of Sec. 5, in relation to Sec. 9 of RA8048, which deals distinctly with the alleged cutting of coconut trees without permit or authority.



Also, records show that the accused did not file a motion to quash information or a motion for bill of particulars before she entered her plea. Under the rules, entering a plea waives any objection the accused may have on 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 of the offense has been extinguished; and 4) double jeopardy has attached. The objection being posed by the accused, the duplicity of charges, does not fall among the exceptions to the rule, thus, the act of the accused of entering her plea is considered an acquiescence to the validity and sufficiency of the present Informations.

Even if the accused timely raised her objection on the validity of the Informations, the Court is convinced that the same is sufficient to enable the accused to intelligently and suitably prepare her defense, as it was stated in ordinary and concise language and in terms sufficient to enable a person of common understanding to know what offense is being charged xxx and for the Court to pronounce judgment, as mandated by the rules⁴.

As to the second requisite, there is no contest as to the inclusion of Criminal Case No. SB-18-CRM-0275, in the coverage of Sec. 13 of RA 3019, as the crime alleged in the Information is Violation of Sec. 3 (e) of RA 3019.

The suspension under Sec. 13, of RA 3019, as amended, is mandatory in character. However, such suspension requires a prior hearing to give the accused the opportunity to challenge the validity of the criminal proceedings against him, which is present in this case, after the prosecution filed its Motion to Suspend *Pendente Lite*, the accused was given an opportunity to challenge the criminal proceedings against her, through her opposition.

The suspension required under this provision is not a penalty, as it is not imposed as a result of judicial proceedings; in fact, if acquitted, the accused official shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during his suspension⁵. Rather, the suspension under Section 13 of R.A. No. 3019, as amended, is a mere preventive measure⁶ that arises from the legal presumption that unless the accused is suspended, he may frustrate his prosecution or commit 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.⁷

Section 13 of R.A. No. 3019, as amended, reinforces the principle enshrined in the Constitution that a public office is a public trust.⁸In view of the constitutional principle and mandatory nature of preventive suspension and in view of the validity

⁴ Section 6 and 9, Rule 110 of the Revised Criminal Procedure.

⁵ Bayot v. Sandiganbayan, No. L-61776 to No. L-61861, March 23, 1984, 128 SCRA 383.

⁶ Villaseñor v. Sandiganbayan, G.R. No. 180700, March 4, 2008, 547 SCRA 658, 666-668.

⁷ Bolastig v. Sandiganbayan, G.R. No. 110503, August 4, 1994, 235 SCRA 103, 108.

⁸ CONSTITUTION, Article XI, Section 1; Berona v. Sandiganbayan, G.R. No. 142456, July 27, 2004, 435 SCRA 303.

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of the Information, specifically under SB-18-CRM-0275, the preventive suspension of herein accused is warranted.

WHEREFORE, in view of the foregoing the Motion to Suspend *Pendente Lite* is hereby **GRANTED** in relation to SB-18-CRM-0275. Accordingly, accused Genevive Gumban Lim-Reyes is hereby suspended as Municipal Mayor of the Municipality of Caluya, Province of Antique or from any public office which she may now or hereafter be holding, for ninety (90) days from receipt of this resolution.

Let a copy of this resolution be furnished the Provincial Governor of Antique, who is directed to implement this order of suspension and report to this Court, within five (5) days from receipt, the action taken on this matter, including the actual date of implementation of the suspension order and the ninetieth (90th) day thereof.

The suspension of the accused shall be automatically lifted upon expiration of ninety (90) day period from the implementation of this resolution.

SO ORDERED.



MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:



RAFAEL R. LAGOS
Chairperson



MARYANN E. CORPUS-MAÑALAC
Associate Justice