



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 11 March 2019.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA----- Chairperson
Justice ZALDY V. TRESPESES----- Member
Justice GEORGINA D. HIDALGO----- Member

The following resolution was adopted:

Crim. Case No. SB-18-CRM-0297, 0308, 0311, 0312, 0313, 0316, 0317, 0320, 0321 AND 0324 - People vs. RODERICK MENDENILLA PAULATE, ET AL.

This resolves the following:

1. Accused Roderick Paulate and Vicente Bajamunde's "COMMENT/EXPLANATION Against Preventive Suspension" dated February 16, 2019;¹
2. The prosecution's "MANIFESTATION [TO: COMMENT/EXPLANATION DATED 16 FEBRUARY 2019]" dated February 28, 2019.²

TRESPESES, J.

This resolves the incident on the suspension *pendente lite* against accused Roderick Mendenilla Paulate, the Comment/Explanation filed by accused Paulate, and the prosecution's Manifestation.

PRE-SUSPENSION HEARING

After the prosecution confirmed that accused Paulate is an incumbent Member of the *Sangguniang Panlungsod* of Quezon City and pursuant to Sec. 4 of Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan,³ a pre-suspension hearing was set on 8 February 2019.

¹ Record, Vol. 2, pp. 400-405.

² Id. at 394-399.

³ Rule VIII, 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 Sec. 13 of R.A. No. 3019

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During the pre-suspension hearing, accused was given a period of ten days to file his comment and show cause why the imposition of the preventive suspension should not be implemented against him. The prosecution was also given a period of three days to file the necessary refutations on accused's arguments.

ACCUSED'S COMMENT/EXPLANATION

On 1 March 2019, accused Paulate filed his Comment/Explanation. He alleges that the Decision of the Ombudsman in the administrative case was reversed and set aside by the Court of Appeals (CA), and has already attained finality. The administrative case involves the same set of facts as in this case and the decision of the CA setting aside the dismissal only shows that there is insufficient evidence against him. Thus, to suspend accused would run counter to the CA's pronouncement.

Accused further argues that the purpose of preventive suspension is to prevent accused from obstructing investigators in the gathering of evidence and possible witnesses. However, this case is already in the pre-trial stage and thus, there is nothing that could be influenced since the Ombudsman is already done with the investigation of the case.

Moreover, the pieces of evidence which are significant to the case are not in the custody of accused's office or any of the City Hall personnel under the supervision of accused. The evidence needed by the prosecution are lodged with the Philippine Statistics Authority, National Bureau of Investigation, Quezon City Hall Personnel Division Office, Quezon City Hall Treasurer's Office and the Commission on Audit, which accused do not have access to.

Finally, accused invokes Sec. 62(c) of the Local Government Code which prohibits imposition of preventive suspension within 90 days immediately prior to any local election.

THE PROSECUTION'S MANIFESTATION

The prosecution counters that the Local Government Code and the Omnibus Election Code invoked by accused are inapplicable. Hence, they

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.



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should not be read together with the provision of RA No. 3019 on preventive suspension as claimed by accused.

The prosecution invokes *Bayot v. Sandiganbayan*⁴ and *People v. Albano*,⁵ declaring the suspension of a public officer mandatory after the validity of the information has been upheld, after a pre-suspension hearing conducted for that purpose. It asserts that no exception in the application or implementation of Sec. 13, RA 3019 has been provided.

RULING

The Court does not find merit in accused Paulate's argument.

To warrant the preventive suspension of accused, the following conditions must be present: that the Information must be valid, and that accused must be charged with the covered offense, i.e. violation of RA 3019, or crimes defined under Title Seven, Book II of the RPC, or any offense involving fraud upon government or public funds or property.⁶

We find that all of the requisite conditions exist in the case at bar.

*The Information for violation of
Sec. 3(e) of R.A. No. 3019 is valid*

In Crim. Case No. SB-18-CRM-0297, accused is charged with the covered offense of violation of Sec. 3(e) of RA No. 3019.

Another pre-condition for the suspension is the existence of a valid information determined at a pre-suspension hearing. The pre-suspension hearing need not be a full-blown hearing. What is required only is that accused be given a fair and adequate opportunity to challenge the validity of the Information through the filing of pleadings.⁷

In here, a pre-suspension hearing⁸ was complied with wherein accused requested and was in fact given time to file comment. However, in his Comment, accused argued only on why he should not be preventively suspended but failed to sufficiently assail the validity of the information.

⁴ G.R. Nos. 61776 to 61861, 23 March 1984.

⁵ G.R. No. L-45376-77, 26 July 1988.

⁶ *Flores v. Layosa*, G.R. No. 154714, 12 August 2004.

⁷ *Torres, et al. v. Garchitorena, et al.*, 442 Phil 765-784 (2002).

⁸ Record, Vol. 2, p. 373 (Conducted on 8 February 2019).

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A perusal of the record also shows that accused has previously challenged the validity of the information through a motion to quash,⁹ which was denied in a Resolution dated 09 July 2018.¹⁰ Further, accused was arraigned and entered a plea of “not guilty” on 21 September 2018,¹¹ thereby admitting and acknowledging the validity of the information.

*Suspension pendente lite under
RA No. 3019 is mandatory*

Accused opposes the issuance of preventive suspension and invokes Sec. 62(c) of RA No. 7160 (otherwise known as the Local Government Code of 1991) which prohibits the imposition of preventive suspension within 90 days immediately prior to any local election. It should be stressed, however, that the ban provided under Sec. 62(c) of RA No. 7160¹² refers to preventive suspension imposed in *administrative cases*. The provision falls under Chapter IV of the Code titled “Disciplinary Actions.”

On the other hand, the preventive suspension referred to in this case is pursuant to Sec. 13 of RA No. 3019, which requires a valid Information in a *criminal case* for covered offense/s. The law states that:

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. (Emphasis supplied)

The two preventive suspensions are separate and distinct from each other. In *Miranda v. Sandiganbayan*,¹³ the Supreme Court held that preventive suspension under Sec. 63 of RA No. 7160¹⁴ does not govern preventive

⁹ Record, Vol. 2, pp. 46-103.

¹⁰ Id. at 167-192.

¹¹ Id. at 206.

¹² Section 62. Notice of hearing. —

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(c) However, no investigation shall be held within ninety (90) days immediately prior to any local election, and no preventive suspension shall be imposed within the said period. If preventive suspension has been imposed prior to the 90-day period immediately preceding local election, it shall be deemed automatically lifted upon the start of aforesaid period.

¹³ G.R. No. 154098, 27 July 2005.

¹⁴ Section 63. Preventive Suspension. -

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suspension imposed by the Ombudsman, which is a constitutionally created office and independent from the Executive branch of the government. Thus, with more reason that Sec. 63 of RA No. 7160 is not the same or shall govern the preventive suspension referred to in RA No. 3019, which pertains to a criminal charge.

Moreover, unlike in RA No. 7160, there is nothing in RA No. 3019 that provides for an exception or prohibition on the imposition of preventive suspension. In fact, Sec. 13 of said law makes it mandatory for the court to immediately issue the suspension order after upon a proper determination of the validity of the information. The rule on the matter is specific and categorical, leaving no room for interpretation. The mandatory nature of preventive suspension under RA No. 3019 was highlighted in *Beroña v. Sandiganbayan*,¹⁵ and subsequently applied to a plethora of cases,¹⁶ thus:

Section 13 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending a criminal prosecution under RA 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. ***This Court has repeatedly held that such preventive suspension is mandatory, and there are no 'ifs' and 'buts' about it.*** (Underscoring supplied)

(a) Preventive suspension may be imposed:

- (1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;
- (2) By the governor, if the respondent is an elective official of a component city or municipality; or
- (3) By the mayor, if the respondent is an elective official of the barangay.

(b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence: Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: Provided, further, That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

(c) Upon expiration of the preventive suspension, the suspended elective official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him, which shall be terminated within one hundred twenty (120) days from the time he was formally notified of the case against him. However, if the delay in the proceedings of the case is due to his fault, neglect, or request, other than the appeal duly filed, the duration of such delay shall not be counted in computing the time of termination of the case.

(d) Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.

¹⁵ G.R. No. 142456, 27 July 2004.

¹⁶ See *Bustillo v. Sandiganbayan*, 521 Phil. 43-52 (2006) as cited in *Hadji Hashim Abdul v. Sandiganbayan*, 722 Phil. 485-493 (2013); *Villaseñor v. Sandiganbayan*, 571 Phil. 373-386 (2008); *Talaga, Jr. v. Sandiganbayan*, 591 Phil. 590-603 (2008); *Miguel v. Sandiganbayan*, 690 Phil. 147-162 (2012) and *Demaala v. Sandiganbayan*, 727 Phil. 462-472 (2014).

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Accused argues that since the pieces of evidence are now in the possession of the prosecution, then there is no more investigation to impede, people to influence and/or intimidate, nor documentary evidence to tamper with. We find this argument misplaced.

In the instant case, while the investigation has already been terminated, the case is still in the pre-trial stage wherein the prosecution is seemingly in the process of collating evidence and securing its witnesses. During this process, the prosecution must be given the opportunity adequately prepare for trial under conditions which would ensure non-intervention and non-interference from accused's camp.¹⁷ This is the purpose of Sec. 13, RA 3019, that is, to prevent the accused public officer from hampering his prosecution by intimidating or influencing a witness, tampering with documentary evidence, or committing further acts of malfeasance while in office.

We should also not lose sight of the fact that accused Paulate is an incumbent elected official and logically possesses influence. This is a reality that we cannot ignore, hence, the legal presumption that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or do both.¹⁸

In fine, preventive suspension under Section 13 of R.A. No. 3019 being mandatory, the court possesses no discretion to determine whether it is necessary to forestall the possibility that the accused may use his office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance.¹⁹

The dismissal of the administrative case is not a bar to the issuance of the order of suspension under Section 13 of RA 3019

Accused argues that the reversal by the Court of Appeals of the Ombudsman's judgment of dismissal in the administrative case proves that there is insufficient evidence against him. Thus, to proceed with the issuance of the order of suspension would run counter to the Court of Appeals' Decision.

We do not agree.

¹⁷ *Office of the Ombudsman v. Evangelista*, G.R. No. 177211, 13 March 2009.

¹⁸ *Id.*

¹⁹ *Dela Cruz v. Sandiganbayan*, G.R. No. 161929, 8 December 2009.

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It is settled that an administrative case filed before the Office of the Ombudsman and the criminal case before the trial court are separate and distinct from each other even if they arise from the same act or omission.²⁰ Therefore, the criminal case may proceed independently of the administrative proceedings. In *Socrates v. Sandiganbayan*, citing *Luciano v. Provincial Governor*, the Supreme Court said:

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...* (Emphasis supplied)

From the foregoing, criminal actions will not preclude administrative proceedings, and vice-versa, insofar as the application of the law on preventive suspension is concerned.²¹

In sum, considering the validity of the Information and that accused is charged with violation of RA 3019, it is mandatory for the Court to issue the corresponding preventive suspension order against him.

WHEREFORE, premises considered, accused Roderick Mendenilla Paulate is hereby ordered suspended from office and said accused is directed to cease and desist from further performing and/or exercising the functions, duties and privilege of his position as Member of the *Sangguniang Panlungsod* of Quezon City or any other government position he may now or thereafter be holding, effective upon notice hereof and to continue for a period of ninety (90) days.

Let a copy of this resolution be furnished the Secretary of the Department of Interior and Local Government (DILG) for the implementation of this order of suspension on said accused. The said office is directed to inform the Court in writing within five (5) days from receipt of this resolution, of the action taken with regard to the suspension of accused, including the actual date when said accused commenced to serve his suspension and the date of its expiration after a period of ninety (90) days, so that his suspension shall be deemed automatically lifted at that time.

SO ORDERED.

Quezon City, Philippines.

²⁰ *Gonzales v. Serrano*, G.R. No. 175433, 11 March 2015.

²¹ *Villaseñor v. Sandiganbayan*, 571 Phil 373-386 (2008).

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ZALDY N. TRESPESES
Associate Justice

WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson


GEORGINA D. HIDALGO
Associate Justice