



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-15-CRM-0284 to 0285
For: Violation of Section 3(e)
of R.A. 3019 as amended

- versus -

CELESTINO MARTINEZ III, ET AL., Present :
Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

AUG 13 2019

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RESOLUTION

FERNANDEZ, J.

For resolution is the suspension *pendente lite* of accused Celestino A. Martinez III under Section 13 of Republic Act No. 3019.

In a *Resolution* dated May 22, 2019,¹ pursuant to Rule VIII, Sec. 4 of the 2018 *Revised Internal Rules of the Sandiganbayan*,² the Court ordered accused Celestino A. Martinez III to show cause why he should not be suspended *pendente lite* in accordance with Section 13 of Republic Act No. 3019.

¹ Record, Volume 5, p. 409.

² *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 Section 13 of R.A. No. 3019 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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On July 9, 2019, accused Martinez filed a *Comment (Re: Resolution dated 22 May 2019)*,³ claiming:

1. There is no legal or factual basis for his suspension *pendente lite*.
2. Since he is no longer the Municipal Mayor of Bogo, Cebu, as charged in the Information, putting him under preventive suspension will no longer serve its purpose, which is to prevent him from frustrating or hampering his prosecution.
3. He is no longer in a position to intimidate or influence any witness, or tamper with any documentary evidence.
4. The validity of the Information in this case has not been finally settled in view of the pendency of his *Petition for Certiorari* before the Supreme Court, questioning the *Resolution* denying his *Motion to Dismiss* on the ground of a violation of his constitutional right to speedy disposition of cases.

The Court finds accused' contentions without merit.

Sec. 13 of R.A. No. 3019 provides:

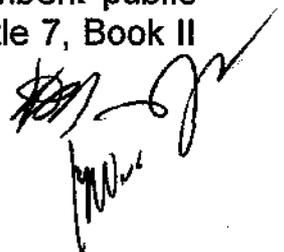
Sec. 13. *Suspension and loss of benefits.* – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as 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.

x x x

(underscoring supplied)

Under the aforequoted provision, suspension from public office is mandatory whenever a valid information charges an incumbent public officer with (1) violation of R.A. No. 3019; (2) violation of Title 7, Book II

³ Dated June 26, 2019, filed by mail and received by the Court on July 9, 2019.



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of the Revised Penal Code (RPC); (3) any offense involving fraud upon government; or (4) any offense involving fraud upon public funds or property.⁴

In this case, the Court finds all the requisites for the imposition of suspension *pendente lite*, pursuant to Sec. 13 of R.A. No. 3019, existing.

Accused Martinez is charged under a valid Information for violation of Sec. 3(e) of R.A. No. 3019. He was arraigned on February 22, 2018.⁵ The records show that he is an incumbent member of the Provincial Board of the Province of Cebu.⁶

The issue on the validity of the Information had already been resolved when accused Martinez filed a *Motion to Dismiss*,⁷ and the Court considered but denied the same in the *Resolutions* dated August 24, 2017⁸ and November 29, 2018.⁹ Thus, in so far as this Court is concerned, there is no more question as to the validity of the Information.

Accused contends that it cannot be said that the validity of the Information has been finally settled because the *Resolutions* dated August 24, 2017 and November 29, 2018, denying his *Motion to Dismiss* and *Motion for Reconsideration*, is still pending review with the Supreme Court.

The Court is not convinced.

The case of *Socrates v. Sandiganbayan, et al.*¹⁰ is instructive on the matter:

This Court has ruled that under Section 13 of the anti-graft law, the suspension of a public officer is mandatory after the validity of the information has been upheld in a pre-suspension hearing conducted for that purpose. This pre-suspension hearing conducted to determine basically the validity of the information, from which the court can have a basis to either suspend the accused and proceed with the trial on the merits of the case, or withhold the suspension of the latter and dismiss the case, or correct any part of the proceeding which

⁴ *Bustillo v. Sandiganbayan*, G.R. No. 146217, April 7, 2006.

⁵ Record, vol. 2, p. 411.

⁶ p. 3, *Urgent Motion for Leave to Travel Abroad*, Record, vol. 5, pp. 103-109.

⁷ Dated March 3, 2017.

⁸ Denying the accused' *Motion to Dismiss*; Record, Vol. 2, pp. 55-77.

⁹ Denying the accused' *Motion for Reconsideration*; Record, Vol. 2, pp. 205-212.

¹⁰ 253 SCRA 773, 794-797 (1996).

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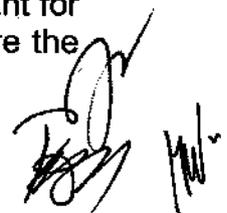
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impairs its validity. That hearing may be treated in the same manner as a challenge to the validity of the information by way of a motion to quash

With the aforementioned jurisprudential authority as the basis, it is evident that upon a proper determination of the validity of the information, it becomes mandatory for the court to immediately issue the suspension order. The rule on the matter is specific and categorical. It leaves no room for interpretation. **It is not within the court's discretion to hold in abeyance the suspension of the accused officer on the pretext that the order denying the motion to quash is pending review before the appellate courts.**

Once the information is found to be sufficient in form and substance, then the court must issue the order of suspension as a matter of course. There are no ifs and buts about it. This is because a preventive suspension is not a penalty. It is not imposed as a result of judicial proceedings. In fact, if acquitted, the official concerned shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension. In view of this latter provision, the accused elective public officer does not stand to be prejudiced by the immediate enforcement of the suspension order in the event that the information is subsequently declared null and void on appeal and the case dismissed as against him. Taking into consideration the public policy involved in preventively suspending a public officer charged under a valid information, the protection of public interest will definitely have to prevail over the private interest of the accused. (*Bayot vs. Sandiganbayan, et al., G.R. Nos. 61776-61861, March 23, 1984, 128 SCRA 383*)

To further emphasize the ministerial duty of the court under Section 13 of Republic Act No. 3019, it is said that the court trying the case has neither discretion nor duty to determine whether or not a preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. The presumption is 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. The law does not require the



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court to determine whether the accused is likely to escape or evade the jurisdiction of the court.

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Clearly, upon determination of the validity of the information, it becomes a ministerial duty on the part of the Court to issue a suspension order against an accused public officer charged with cases enumerated in Sec. 13 of R.A. No. 3019. The Court is without any discretion to hold in abeyance the suspension of such accused public officer, even if the Court's determination of the validity of the Information was raised on appeal. Therefore, this Court's duty to issue a preventive suspension order against accused Martinez is not affected by the pendency of his *Petition for Certiorari* with the Supreme Court.

Since the requisites imposed by Sec. 3(e) of R.A. No. 3019 are present in this case, the Court is duty-bound to order the suspension of accused Martinez.

Accused' contention that putting him under preventive suspension will no longer serve its purpose because he no longer holds the position for which he was charged in the information, is likewise without merit.

The fact that accused Martinez is no longer holding the position for which he was charged in the information is immaterial in determining the propriety of the issuance of an order of suspension *pendente lite*. The term "office" in Section 13 of R.A. No. 3019 applies to any office which the officer might currently be holding and not necessarily the particular office in relation to which he is charged.¹¹

Besides, the purpose of preventive suspension under Section 13 of R.A. No. 3019 is not only to prevent the accused public officer from frustrating or hampering his prosecution, but also to prevent said accused from committing further acts of malfeasance while in public office.¹² The Court has neither discretion nor duty to determine whether or not a preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. The presumption is that unless the accused is suspended from public office, he may frustrate his prosecution or commit further acts of malfeasance or do both.¹³

In fine, the Court finds the suspension *pendente lite* of accused Martinez warranted.



¹¹ *Beroña v. Sandiganbayan*, 435 CRA 303, 307-308 [2004], citing *Segovia vs. Sandiganbayan*, 288 SCRA 328 [1998].

¹² *Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994.

¹³ 253 SCRA 773, 794-797 (1996).

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Section 13 is so clear that there is hardly room for any extended court rationalization of the law. The law 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. Such preventive suspension is mandatory, and there are no 'ifs' and 'buts' about it.¹⁴

WHEREFORE, the Court orders the suspension *pendente lite* of accused **CELESTINO A. MARTINEZ III** as member of the Provincial Board of the Province of Cebu, and from any other public positions he may now or hereafter hold for a period of ninety (90) days from receipt of this Resolution.

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. The Secretary is requested to inform the Court of the action taken thereon within fifteen (15) days from receipt hereof.

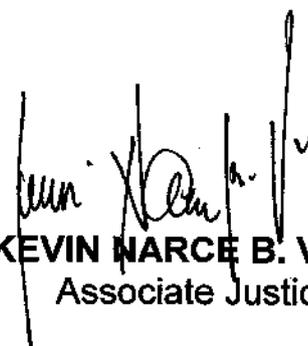
The suspension of the accused shall automatically be lifted upon the expiration of the ninety-day period from the implementation of this Resolution.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁴ *Beroña v. Sandiganbayan.*