



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-16-CRM-0413
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 16 2019 *ffw*

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RESOLUTION

FERNANDEZ, SJ, J.

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

On January 15, 2018, the prosecution filed a *Motion to Suspend Accused Pendente Lite*,¹ asking the Court to suspend accused Martinez as a member of the Provincial Board of the Province of Cebu.

On March 8, 2018, accused Martinez filed a *Motion to Admit (Re: Opposition dated 6 March 2018) with attached Opposition (Re: Motion to Suspend dated 11 January 2018)*,² claiming:

¹ Dated January 11, 2018, Record, vol.2, pp. 41-44.

² Dated March 6, 2018, Record, vol. 2, pp. 90-99.

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1. The prosecution erroneously anchors its *Motion* on Section 13, Republic Act No. 3019, which requires that criminal prosecution must be under a valid Information. In this case, he was arraigned based on an invalid Information.
2. There is a pending *Petition for Review* seeking for the dismissal of the instant case based on inordinate delay. Pending determination by the Supreme Court on his *Petition*, the validity of the Information cannot be said to have been affirmed with finality. Hence, the prosecution's *Motion to Suspend* is not only premature but presumptuous.
3. The facts alleged in the information do not amount to a crime.
4. There is no sufficient reason to deprive the people of Cebu of the services of their duly elected local official.

On September 26, 2018, the prosecution filed a *Compliance with Motion to Withdraw*,³ declaring that the Memorandum of Ombudsman Samuel R. Martires ordered the withdrawal of all motions for suspension *pendente lite* based on the pronouncement of the Supreme Court in the case of *Flores vs. Layosa* (G.R. No. 154714, August 12, 2004) that Sec. 13 of R.A. No. 3019, as worded, allows the court to issue the suspension order *motu proprio*.

THE COURT'S RULING

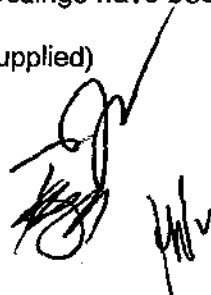
The Court grants the *Motion to Withdraw* filed by the prosecution. All the same, the Court still finds the suspension of accused Martinez warranted under Sec. 13 of R.A. No. 3019.

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)

³ Record, vol. 2, p. 300.



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

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 November 24, 2017.⁴ The records show that he is an incumbent member of the Provincial Board of the Province of Cebu.⁵

The issue on the validity of the Information had already been resolved when accused Martinez filed a *Motion to Quash Information And/or Motion to Dismiss*,⁶ and the Court considered but denied the same in the *Resolutions* dated March 1, 2017⁷ and November 29, 2018.⁸ 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 *Resolution* denying his *Motion to Quash Information And/or Motion to Dismiss*, is still pending review with the Supreme Court.

The Court is not convinced.

The case of *Socrates v. Sandiganbayan, et al.*⁹ 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

³ *Bustillo v. Sandiganbayan*, G.R. No. 146217, April 7, 2006.

⁴ Record, vol. 2, p. 006.

⁵ p. 3, *Urgent Motion for Leave to Travel Abroad*, Record, vol. 2, pp. 494-500.

⁶ Dated January 6, 2017, Record, vol. 1, pp. 296-302.

⁷ Denying the accused' *Motion to Dismiss*; Record, Vol. 2, pp. 55-77.

⁸ Denying the accused' *Motion for Reconsideration*; Record, Vol. 2, pp. 205-212.

⁹ 253 SCRA 773, 794-797 (1996).

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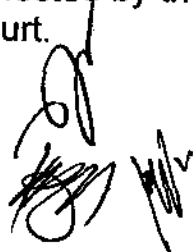
case, or correct any part of the proceeding which impairs its validity. That hearing may be treated in the same manner as a challenge to the validity of the information by way of a motion to quash

With the aforequoted 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*)

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Clearly, upon determination of the validity of the information, it becomes ministerial 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. Thus, 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.



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Since the requisites imposed by Sec. 3(e) of R.A. No. 3019 are present in this case, the Court is left without any recourse but to order the suspension of accused Martinez.

The fact that the people of Cebu will be temporarily deprived of the services of their elected official is likewise of no consequence. 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.¹⁰

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.

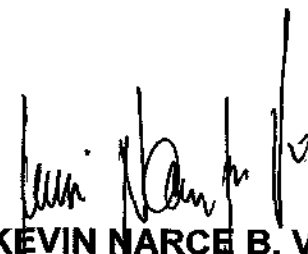
The suspension of the accused shall automatically be lifted upon the expiration of the ninety-day period from the implementation of this Resolution.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁰ *Beroña v. Sandiganbayan*, G.R. No. 142456, July 27, 2004.