



REPUBLIC OF THE PHILIPPINES

# Sandiganbayan

Quezon City

## SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0337**  
For: Violation of Section 3(e)  
of R.A. 3019 as amended

- versus -

**SB-18-CRM-0338 and 0339**  
For: Malversation (Art. 217 of the  
Revised Penal Code)

**EDGAR G. RAMA, ET AL.,**  
*Accused.*

*Present :*

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

*Promulgated:*

**AUG 20 2019**

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## RESOLUTION

**FERNANDEZ, SJ, J.**

For resolution is the suspension *pendente lite* of accused Edgar G. Rama, Gorgonio E. Gonzales, Sergio G. Zurita, Nilo B. Gorgonio and William G. Surbano under Section 13 of R.A. No. 3019.

In a *Resolution* dated May 23, 2019,<sup>1</sup> pursuant to Rule VIII, Sec. 4 of the 2018 *Revised Internal Rules of the Sandiganbayan*,<sup>2</sup> the Court ordered accused Edgar G. Rama, Gorgonio E. Gonzales, Sergio G. Zurita, Nilo B. Gorgonio and William G. Surbano to show cause why

<sup>1</sup> Record, Volume 6, p. 300.

<sup>2</sup> *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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they should not be suspended *pendente lite* in accordance with Section 13 of Republic Act No. 3019.

On July 18, 2019, accused filed their *Comment*.<sup>3</sup> They contend:

1. Accused Gonzales, Zurita, Gorgonio and Surbano are no longer holding any public office, hence, Section 13 no longer applies to them.
2. Accused Rama was re-elected as Municipal Mayor of the Municipality of Poro, Province of Cebu. However, it is no longer necessary to suspend him because:
  - a. The transaction involved in these cases happened in the year 2004 or more or less 15 years ago. It would be unfair to put him under preventive suspension for allegedly committing a crime 15 years ago.
  - b. Accused RAMA has a pending petition before the Supreme Court assailing the *Resolution* of this Court denying his *Motion to Dismiss* on the ground of inordinate delay. Thus, there is an issue as to the validity of the Information.
  - c. The prosecution has already presented several witnesses in the instant case and all the documents involved are already in the possession of the prosecution. The possibility that accused Rama will use his influence over the prosecution witness and the apprehension that the documents will be tampered are no longer present.

**THE COURT'S RULING**

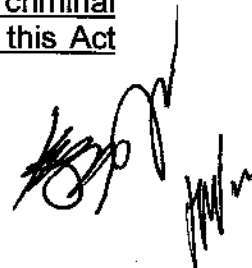
The Court notes accused Gonzales, Zurita, Gorgonio and Surbano's manifestation that they are no longer holding any public office.

The Court finds all the requisites for the imposition of suspension *pendente lite*, pursuant to Sec. 13 of R.A. No. 3019, existing in so far accused Rama is concerned.

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**

<sup>3</sup> Dated July 16, 2019.



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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.

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(underscoring supplied)

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.<sup>4</sup>

In this case, accused Rama is charged under valid Informations for violation of Sec. 3(e) of R.A. No. 3019 and *Malversation* under Art. 217 of the Revised Penal Code. Any issue as to the validity of the Informations has already been settled when the Court denied accused' *Motion to Quash*,<sup>5</sup> *Motion to Reconsideration*,<sup>6</sup> and *Supplemental Motion for Reconsideration*<sup>7</sup> in *Resolutions* dated August 7, 2018<sup>8</sup> and October 12, 2018.<sup>9</sup> He was arraigned on October 18, 2018.<sup>10</sup> Thus, in so far as this Court is concerned, there is no more question as to the validity of the Information.

The mere pendency of a *Petition for Certiorari* with the Supreme Court does not render the Informations invalid nor does it preclude the Court from carrying out its duty to issue a preventive suspension order.

The case of *Socrates v. Sandiganbayan, et al.*<sup>11</sup> is enlightening:

This Court has ruled that under Section 13 of the anti-graft law, the suspension of a public officer is mandatory

<sup>4</sup> *Bustillo v. Sandiganbayan*, G.R. No. 146217, April 7, 2006.

<sup>5</sup> Dated May 30, 2018; Record, Vol. 1, pp. 440-465.

<sup>6</sup> Dated August 15, 2018; Record, Vol. 3, pp. 66-67.

<sup>7</sup> Dated October 1, 2018, filed October 4, 2018.

<sup>8</sup> Record, Vol. 2 pp. 439-453.

<sup>9</sup> Record, Vol. 3, pp. 233-242.

<sup>10</sup> Record, vol. 6 p. 300.

<sup>11</sup> 253 SCRA 773, 794-797 (1996).

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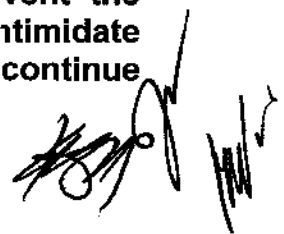
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after the validity of the information has been upheld in a pre-suspension hearing conducted for that purpose. This pre-suspension hearing conducted to determine basically the validity of the information, from which the court can have a basis to either 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 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*).

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



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**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 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 the duty 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 Rama is not affected by the pendency of his *Petition for Certiorari* with the Supreme Court.

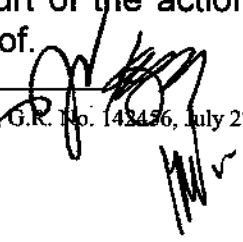
The fact that the prosecution has already presented its witnesses and already has in its possession the documents relative to the transactions subject of these cases, is likewise of no consequence. The Court neither has discretion nor duty to determine whether or not a preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution. Once the requisites under Sec. 13 R.A. No. 3019 exist, preventive suspension is mandatory, and there are no 'ifs' and 'buts' about it.<sup>12</sup>

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

**WHEREFORE**, the Court orders the suspension *pendente lite* of accused **EDGAR G. RAMA** as Municipal Mayor of the Municipality of Poro, 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.

<sup>12</sup> *Beroña v. Sandiganbayan*, G.R. No. 143436, July 27, 2004.



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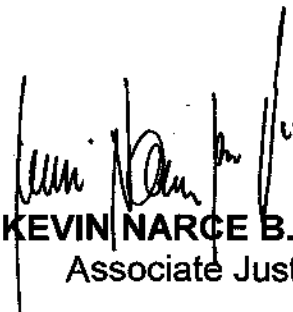
The suspension of the accused shall automatically be lifted upon the expiration of the ninety-day period from the implementation of this Resolution.

**SO ORDERED.**

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**We Concur:**

  
**KARL B. MIRANDA**  
Associate Justice

  
**KEVIN NARGE B. VIVERO**  
Associate Justice