



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-17-CRM-1424 - 1425

For: Violation of Section 3 (e) of
Republic Act (R.A.) No. 3019

-versus-

PRESENT:

ALFREDO G. GERMAR,
Accused,

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

Promulgated: **SEP 03 2019**

X-----

RESOLUTION

MIRANDA, J.:

This resolves the suspension *pendente lite* of accused Alfredo G. Germar.

In its Order dated July 19, 2019 and pursuant to Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan,¹ the Court directed the accused to show cause why he should not be suspended *pendente lite* in accordance with Section 13 of R.A. No. 3019 within a non-extendible period of ten (10) days from receipt.

In his Compliance (Re: Show Cause Order on Preventive Suspension under R.A. No. 3019) dated July 23, 2019, the accused alleges that: 1) his preventive suspension is unwarranted because the informations are invalid as

¹ Section 4, Rule VIII of the Revised Internal Rules of the Sandiganbayan:

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 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.

the acts imputed to him under the said informations do not constitute a specific crime under R.A. No. 3019 pursuant to *Germar v. Legaspi*;² 2) preventive suspension is not automatic because it is conditioned on the existence of a valid information determined at a pre-suspension hearing; 3) the informations are subject to quashal under Rule 117 of the Rules of Court as the said informations do not charge an offense; 4) the Supreme Court decision on *Germar v. Legaspi* is already immutable and precludes the preventive suspension of the accused; and 5) alternatively, the Honorable Court should hold the preventive suspension in abeyance until the Prosecution completes the presentation of its rebuttal evidence.

RULING

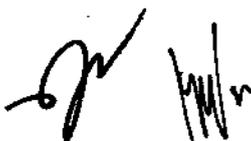
The Court does not find merit in the arguments of the accused.

Section 13 of R.A. No. 3019 states:

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.
(Emphasis supplied)

Suspension from 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; (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 that all the requisites for the suspension *pendente lite* of the accused exist.



² G.R. No. 232532, October 1, 2018.

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

The accused is charged under a valid information for violation of Section 3 (e) of R.A. No. 3019. He was arraigned on October 27, 2017 and entered a plea of “not guilty” to the charges in the two informations filed against him.⁴ Having entered his plea, the accused admitted and acknowledged the validity of the informations. Records show that the accused is the incumbent Municipal Mayor of Norzagaray, Bulacan.⁵

The order of suspension *pendente lite*, while mandatory in nature, is not automatic or self-operative. Before such suspension is imposed, a determination as to the validity of the information must first be made in a pre-suspension hearing.⁶ There is no specific rule as to the conduct of such pre-suspension hearing. It is sufficient that **the accused should be given a fair and adequate opportunity to challenge the validity of the criminal proceedings against him.**⁷

The pre-suspension hearing is similar to a challenge on the validity of the information by way of a motion to quash.⁸

In this case, the issue on the validity of the informations had already been resolved when the Court denied the Motion to Quash with Motion to Defer Arraignment dated August 31, 2017⁹ of the accused in its Resolution dated October 11, 2017.¹⁰ The accused neither sought reconsideration of the said resolution nor filed a petition for certiorari. As far as the Court is concerned, there is no more question as to the validity of the informations. The hearings or proceedings held thereon constituted a pre-suspension hearing.

Once a court determines that the information charging a public officer with an offense under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, or any other offense involving fraud upon government or public funds or property is valid, the suspension *pendente lite* of the accused must follow as a matter of course.¹¹ Preventive suspension is mandatory, and there are no ‘ifs’ and ‘buts’ about it.¹² The court has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused

⁴ Certificate of Arraignment dated October 27, 2017, Records, vol. 1, p. 179; Order dated October 27, 2019, Records, vol. 1, pp. 180-A – 180-B.

⁵ Motion for Leave to Travel Abroad dated July 16, 2019, Records, vol. 2, pp. 371-375; Authority to Travel dated July 15, 2019 issued by Bulacan Governor Daniel R. Fernando, Records, vol. 2, p. 386; Application for Leave filed by the accused on July 9, 2019.

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

⁷ *Santiago v. Sandiganbayan*, G.R. No. 128055, April 18, 2001.

⁸ *Talaga v. Sandiganbayan*, G.R. No. 169888, November 11, 2008.

⁹ Records, vol. 1, pp. 118-132.

¹⁰ Records, vol. 1, pp. 147-154.

¹¹ *Flores v. Hon. Layosa*, G.R. No. 154714, August 12, 2004.

¹² *Villaseñor v. Sandiganbayan*, G.R. No. 180700, March 4, 2008.

from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office.¹³

The Supreme Court has repeatedly held that preventive suspension under Section 13 of R.A. No. 3019 is mandatory. Section 13 of R.A. No. 3019 is clear and explicit that there is hardly room for any extended court rationalization of the law. It 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.¹⁴

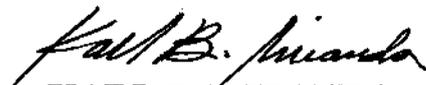
Finally, the Supreme Court, in *Germar v. Legaspi*, did not direct this Court to dismiss the present cases outright. However, the Court may consider said decision in resolving the present cases.

WHEREFORE, premises considered, accused Alfredo G. Germar is ordered **SUSPENDED** *pendente lite*, for a period of ninety (90) days, as Municipal Mayor of Norzagaray, Bulacan, or any other public position he may now or hereafter be holding.

Accused Alfredo G. Germar is ordered to **CEASE AND DESIST** from further performing and/or exercising the functions, duties, and privileges of his position upon the implementation of this Order of Preventive Suspension. The suspension of the accused shall be automatically lifted upon the expiration of the 90-day period from the implementation of this resolution.

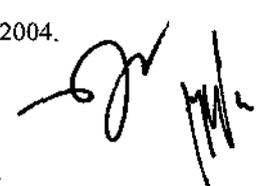
Let a copy of this Resolution be furnished the Secretary of the Department of the Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary of the DILG, or his duly authorized representative, is directed to inform the Court of the action taken thereon, the actual date of the implementation of the suspension, and the expiry date of the 90-day period, within fifteen (15) days from receipt hereof.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

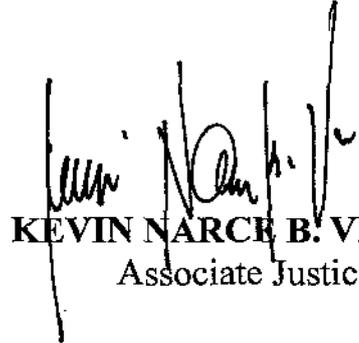
¹³ *Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994.

¹⁴ *Beroña v. Sandiganbayan and People*, G.R. No. 142456, July 27, 2004.



WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KEVIN NARCE B. VIVERO
Associate Justice