



**REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN**

**QUEZON CITY**

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,  
Plaintiff,**

**CRIM. CASE NO. SB-  
23-CRM-0043**

**For: Violation of Section  
3(E) OF R.A. NO. 3019, as  
amended**

**-versus-**

**HERBERT CONSTANTINE M.  
BAUTISTA, ET AL.,**

**Accused.**

Present:

**X-----X**

**Cabotaje-Tang, P.J.,  
Chairperson**

**Fernandez, B., J and  
Moreno, R., J.**

**PROMULGATED:**

**APRIL 3, 2024**

**X-----X**

**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

This resolves the question of whether accused Aldrin C. Cuña should be placed under preventive suspension pursuant to Section 4, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan, and Section 13 of Republic Act

(R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

In its Resolution dated December 19, 2023, the Court gave accused Cuña a non-extendible period of ten (10) days from notice thereof within which to explain why he should not be preventively suspended from office pursuant to Section 13 of Republic Act (R.A.) No. 3019 and Section 4, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan.<sup>1</sup>

Despite receipt<sup>2</sup> of the aforesaid resolution requiring him to explain why he should not be preventively suspended, accused Cuña did not file his explanation at all. Thus, accused Cuña is deemed to have waived his right to file his explanation.

In its Resolution dated February 29, 2024, the Court declared the subject matter deemed submitted for resolution. Thus, the Court shall now resolve the issue whether accused Cuña should be placed under preventive suspension.

Section 13 of R.A. No. 3019, as amended, reads:

*Section 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 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.*

<sup>1</sup> p. 34, Record, Volume 2

<sup>2</sup> Accused Cuña personally received a copy of the said resolution on January 05, 2024 (at p. 69, Record, Volume 2) while his counsel of record, Atty. Angel Enrico Mira, Jr., received the same through email on January 04, 2024 which the latter acknowledged on the same day. (Record, Volume 2)

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*In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to retribute the same to the Government.*

In ***Gonzaga v. Sandiganbayan***,<sup>3</sup> the Supreme Court ruled that preventive suspension under Section 13 of R.A. No. 3019 is *mandatory*; there are no ifs or buts about it.

Again, in ***Bolastig v. Sandiganbayan***,<sup>4</sup> the Supreme Court stressed the mandatory nature of preventive suspension as follows:




***... It is now settled that Sec. 13 of Republic Act No. 3019 makes it mandatory for the Sandiganbayan to suspend any public official against whom a valid information charging a violation of that law, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property is filed. The court trying a case has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continuing 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.***

Verily, once the Information is found to be sufficient in form and substance, the court must issue the order of suspension as a matter of course. There are no ifs or buts about it. This is because a preventive suspension is not a

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<sup>3</sup> 201 SCRA 417 (1991)

<sup>4</sup> 235 SCRA 103 (1994); emphasis supplied



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. 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.<sup>5</sup>

In this case, there is absolutely no question to the validity of the subject Information. Accused Cuña is now serving as the Executive Vice President of the National Defense College of the Philippines (NDCP). Thus, his preventive suspension should now follow as a matter of course.

**WHEREFORE**, the Court hereby **ORDERS** the suspension *pendente lite* of accused ALDRIN CHIN CUÑA as Executive Vice President of the National Defense College of the Philippines and from any other public positions he may now or hereafter hold for a period of ninety (90) days immediately from receipt of this resolution.

Let a copy of this Resolution be furnished the Secretary of the Department of Defense (DND) for the implementation of this order of suspension. The Secretary of DND is requested to inform the Court of the action taken thereon within five (5) days from the implementation of the suspension.

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

**SO ORDERED.**

Quezon City, Metro Manila

  
**AMPARO M. CABOTAJE-TANG**

Presiding Justice  
Chairperson

<sup>5</sup> Socrates v. Sandiganbayan, 253 SCRA 773 (1996)

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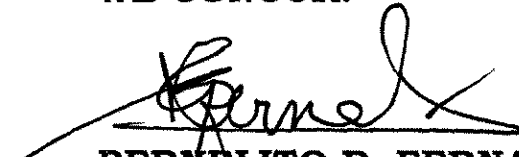
RESOLUTION

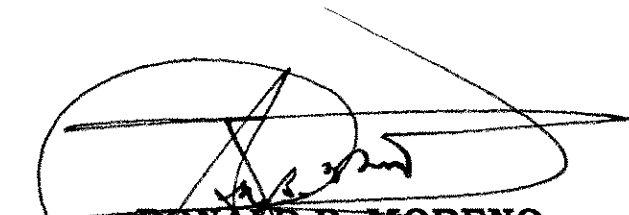
Criminal Case No. SB-23-CRIM-0043

People v. Herbert Constantine M. Bautista, et al.

X-----X

**WE CONCUR:**

  
**BERNELITO R. FERNANDEZ**  
Associate Justice

  
**RONALD B. MORENO**  
Associate Justice



