



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN**

QUEZON CITY

THIRD DIVISION

**PEOPLE OF THE PHILIPPINES,
Plaintiff,**

**CRIM. CASE NO. SB-
16-CRM-0183-0186**

**For: Violation of Section
3 (e) of R.A. No.
3019, as amended**

**CRIM. CASE NO. SB-
17-CRM-0642-0645**

**For: Violation of Section
3 (e) of R.A. No.
3019, as amended,
Malversation
through Falsification
and Malversation of
Public Funds**

-versus-

**MARC DOUGLAS CHAN CAGAS,
IV, ET AL.,**

Accused.

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Present:

**Cabotaje-Tang, P.J.,
Chairperson
Fernandez, B., J and
Moreno, R., J.**

PROMULGATED:

DECEMBER 3, 2020

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RESOLUTION

CABOTAJE-TANG, P.J.:

In its Resolution adopted on July 29, 2020, the Court gave accused Cagas IV 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.¹

Consequently, accused Cagas IV submitted his Comment/Explanation dated September 18, 2020.²

THE COURT'S RULING

I. Courts have the ministerial duty to place an accused under preventive suspension pursuant to Section 13 of R.A. No. 3019, as amended, once the requisites for its proper imposition are established.

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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*

¹ p. 56, Record

² pp. 73-84, Record

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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.

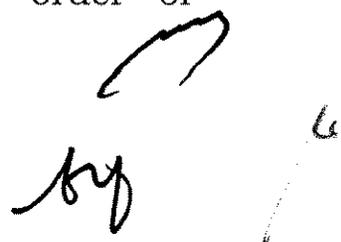
In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to retribute the same to the Government.

In **Socrates vs. Sandiganbayan, et al.**,³ the Supreme Court reiterated the nature of the preventive suspension contemplated in the afore-quoted legal provision, to wit:

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 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. (See People vs. Alabano, etc., et al., 163 SCRA 511 [1988])

Verily, once the Information is found to be sufficient in form and substance, the court must issue the order of

³ 253 SCRA 773 (1996)

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suspension as a matter of course. There are no ifs or 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. 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.⁴

Stated differently, it becomes the ministerial duty of the court to forthwith issue the order of preventive suspension. The court has **no discretion**, for instance, to hold in abeyance the suspension of the accused official on the pretext that the order denying the latter's motion to quash is pending review before the appellate courts.⁵

In this case, there is absolutely no question to the validity of the subject Information as, in fact, trial in the case had already begun.

Moreover, accused Cagas IV was given the opportunity to explain why he should not be placed under preventive suspension.

In his Comment/Explanation dated September 18, 2020, accused Cagas IV argues that in **Crespo vs. Mogul**,⁶ the courts are given the "exclusive discretion" regarding any disposition of the case filed before it. This discretion allegedly includes sparing him from the sweeping imposition of *suspension pendete lite*. While he is aware of the mandatory character of Section 13 of R.A. No. 3019, he submits that since there are two (2) doctrines allegedly applicable to him, the other being the **Crespo vs. Mogul** doctrine, the one that is most favorable to him must, therefore, be adopted. He intones:

Accused is aware of the fact that Section 13 of RA 3019 has already been interpreted as one of

⁴ Socrates vs. Sandiganbayan, 253 SCRA 773 (1996)

⁵ Socrates vs. Sandiganbayan, 253 SCRA 773 (1996)

⁶ 151 SCRA 462 (1987)



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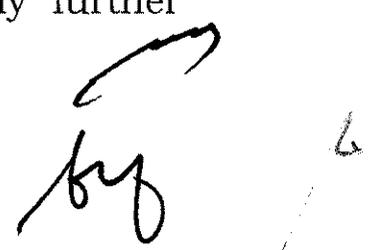
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mandatory character. However, similarly settled by the Supreme Court En Banc is the rule that Courts are given the exclusive discretion as regards any disposition on the cases filed before it with the only qualification that the action of the court must not impair substantial rights to the due process of law. Thus, considering that there are two (2) doctrines applicable to accused Cagas, pro reo doctrine in criminal cases would require that the one most favorable to the accused must be adopted, that is, this honorable Court may legally and validly inquire on the propriety and fairness of imposing the suspension pendente lite provision instead of literally following the letter of Section 13 of RA 3019 without due regard on whether the evil sought to be prevented by Section 13 of RA 3019 still or actually exist.⁷

Moreover, he contends that placing him under preventive suspension will no longer serve its purpose considering that the opportunity of tampering the subject documents or influencing the possible witnesses in these cases would not do him any benefit allegedly because other than the Memorandum of Agreement (MOA) and Letter of Indorsement, all the other documents pertaining to the questioned transactions were not signed by him but by the concerned officers/personnel of the Department of Budget and Management (DBM), Technology Resource Center (TRC) and National Agribusiness Corporation (NABCOR) and the representatives of the subject non-government organization (NGO). By allegedly not signing any document and not participating in the implementation of the questioned transactions, he has no reason to tamper any document or influence any witness.

Accused Cagas IV likewise claims that the documents being referred to may no longer be tampered considering that they were already pre-marked and made part of the court records; that, there is no guarantee that a person placed under preventive suspension will not commit any further

⁷ pp. 1-2, Comment/Explanation dated September 18, 2020; pp. 73-74, Record

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malfeasance in the office based on human experience. Thus, the evil sought to be avoided contemplated under Section 13 of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended does not exist insofar as he is concerned.⁸

He further claims that placing him under preventive suspension at this time will no longer serve its purpose because the subject documents are already pre-marked and made part of the court records.

- 1. **The accused-movant's invocation of the *Crespo v. Mogul* ruling in his bid to apply the doctrine of *in dubio pro reo* to the present case is utterly misplaced.**

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In dubio pro reo principle is the rule of lenity. This doctrine provides that "a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment."⁹

To begin with, a preventive suspension is not a penalty. More importantly, the Supreme Court has consistently held that the provision on preventive suspension under R.A. No. 3019, as amended, is clear and explicit:

When the statute is clear and explicit, there is hardly room for any extended court ratiocination or rationalization of the law. Republic Act No. 3019 unequivocally mandates the suspension of a public official from office pending a criminal prosecution against him. This Court has repeatedly held that such

⁸ pp. 2-4, Comment/Explanation (*Why Accused should not be Suspended Pendete Lite*) dated September 18, 2020; pp. 74-76, Record

⁹ CJ Corona in his Separate Opinion in *People vs. Temporada*, 574 SCRA 258 (2008) citing Black's Law Dictionary, Eighth Edition (2004), p. 1359

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preventive suspension is mandatory . . . , and there are no “ifs” and “buts” about it.¹⁰

Accordingly, the rule of lenity absolutely does not apply to this case.

Indeed, the accused-movant’s invocation of the ***Crespo vs. Mogul*** doctrine as basis for applying the rule of lenity to this case is utterly misplaced.

Crespo vs. Mogul did not involve any question on the preventive suspension of a public officer charged with a crime. It was a petition for review whereby the petitioner prayed that the respondent judge be perpetually enjoined from enforcing his threat to proceed with the arraignment and trial of petitioner in a criminal case for *estafa*. The Supreme Court declared in the said case that once a complaint or information is filed in Court any disposition of the case **as to its dismissal or conviction or acquittal of the accused rests in the sound discretion of the Court.**

Thus, the discretion referred to in the said case pertained to the court’s power to determine whether to proceed with the trial of the case filed before it or to dismiss it. While the matter of preventive suspension under Section 13 of *R.A. No. 3019*, as amended, is an incident of the present case, the Supreme Court has repeatedly held that it is the ministerial duty of the Court to suspend an accused once it is positively ascertained that the Information filed against him is valid and after he shall have been given an opportunity to be heard. As hereinbefore shown, these twin requirements are present in this case.

- 2. The other arguments raised by accused Cagas IV have been previously passed upon by the Supreme Court in earlier cases which raised the same or similar arguments.**

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¹⁰ Libanan vs. Sandiganbayan, 233 SCRA 163 (1994)

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On the other points raised by the accused-movant, the teaching of the Supreme Court in ***Bolastig vs. Sandiganbayan***¹¹ is instructive:

*... 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.*¹²

Indeed, in ***Segovia vs. Sandiganbayan***,¹³ the Supreme Court declared that the argument of "discretionary suspension" borders on being contumacious disregard of the solemn magisterial pronouncement of the Highest Court of the land, thus:

On the contrary, in promulgating those resolutions, the Sandiganbayan did but adhere to the clear command of the law and what it calls a "mass of jurisprudence" emanating from this Court, sustaining its authority to decree suspension of public officials and employees indicted before

¹¹ 235 SCRA 103 (1994)

¹² Emphasis supplied

¹³ 288 SCRA 328 (1998)



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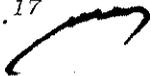
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it. Indeed, that the theory of "discretionary suspension" should still be advocated at this late date, despite the "mass of jurisprudence" relevant to the issue, is little short of amazing, bordering on contumacious disregard of the solemn magisterial pronouncements of the Highest Court of the land.

Republic Act No. 3019 was enacted by Congress more than 37 years ago, on August 17, 1960, becoming effective on the same date. The law was later amended by Republic Act No. 3047, Presidential Decree 677 and Presidential Decree No. 1288. The last amendment — to Section 13 thereof — was introduced by Batas Pambansa Bilang 195, approved on March 16, 1972.

The validity of Section 13, R.A. 3019, as amended — treating of the suspension pendente lite of an accused public officer — may no longer be put at issue, having been repeatedly upheld by this Court. As early as 1984, in *Bayot v. Sandiganbayan*,¹⁴ the Court held that such suspension was not penal in character but merely a preventive measure before final judgment; hence, the suspension of a public officer charged with one of the crimes listed in the amending law, committed before said amendment, does not violate the constitutional provision against an *ex post facto* law. The purpose of suspension is to prevent the accused public officer from frustrating or hampering his prosecution by intimidating or influencing witnesses or tampering with documentary evidence, or from committing further acts of malfeasance while in office.¹⁵ Substantially to the same effect was the Court's holding, in 1991, in *Gonzaga v. Sandiganbayan*,¹⁶ that preventive suspension is not violative of the Constitution as it is not a penalty; and a person under preventive suspension remains entitled to the constitutional presumption of innocence since his culpability must still be established.¹⁷



¹⁴ 128 SCRA 383 (1984)

¹⁵ citing *Bolastig vs. Sandiganbayan*, 235 SCRA (1994)

¹⁶ 201 SCRA 417 (1991)

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WHEREFORE, the Court hereby **ORDERS** the suspension *pendente lite* of accused **MARC DOUGLAS CHAN CAGAS IV** as Vice-Governor of Davao Del Sur 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 Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary of DILG is requested to inform the Court of the action taken thereon within five (5) days from the implementation of the suspension.

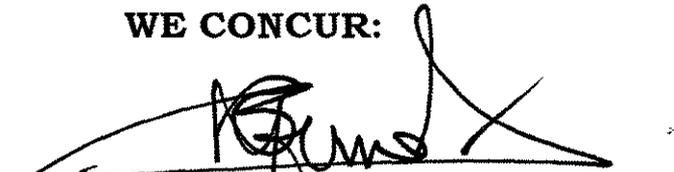
The suspension of the accused shall be automatically lifted upon the expiration of the ninety-day period from the implementation of this resolution.

SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice