

**JOSE C. LUCIANO AND FLORENTINO S. ROLLS, PETITIONERS, VS.
HON. HERMINIO C. MARIANO, AS JUDGE OF THE COURT OF FIRST
INSTANCE OF RIZAL; HON. B. JOSE CASTILLO, AS INCUMBENT
PROVINC...**

G.R. No. L-32950. July 30, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

A petition for writs of certiorari, mandamus and prohibition, pleading grave abuse of discretion and excess of jurisdiction on the part of respondent court in issuing its questioned order of December 15, 1970 in that (a) no proper preliminary investigation or review of the criminal anti-graft charge against petitioners was conducted by respondent provincial fiscal and (b) respondent court, without holding the hearing on the validity of the information previously ordered by this Court, prematurely and improperly held the questioned information to be valid, paving the way for the imminent wrongful suspension from office of petitioner Jose C. Luciano, incumbent acting mayor of Makati, Rizal, as a necessary consequence thereof.

The present action is a sequel case of Luciano vs. Wilson,[1] resolved by the Court on August 31, 1970, wherein Mr. Justice Reyes thus summarized the antecedent facts:

"As a consequence of our decision in G. R. No. L-30306 (Jose C. Luciano vs. Provincial Governor of Rizal, et al.) promulgated on 20 June 1969, upholding the suspension from office, by the Court of First Instance of Rizal, of elected Mayor Maximo Estrella, Vice-Mayor Teotimo Gealogo, and Councilors Justino Ventura, Pedro Ison, Ignacio Babasa and Bernardo Nonato, among other accused, as a result of their having been found guilty of violation of Republic Act 3019 (Anti-Graft and Corrupt Practices Act), then ranking Councilor Jose C. Luciano entered into the office of and duly qualified as Acting Mayor of Makati.

"The records show, however, that on 30 May 1969, or prior to his assumption of the mayorship, petitioner Luciano, together with Florentino S. Rolls, was himself charged with violation of the Anti-Graft and Corrupt Practices Law before the Court of First Instance of Rizal, in an information signed by then Provincial Fiscal Benjamin H. Aquino (Criminal Case No. 19346). To forestall his suspension from public office, Luciano filed with this Court on 3 June 1969 a petition for prohibition to restrain the Provincial Fiscal from filing the information against him; the Court of First Instance of Rizal from accepting and/or giving due course to that information; and to have said information declared null and void. The petition was based on the allegations that the disputed information, although dated 29 May 1969, was actually transmitted to the Court of First Instance of Rizal only on 30 May 1969, the very day when the respondent fiscal took his oath of office as judge of the Rizal Court of First Instance; and that such criminal information was filed without the respondent fiscal having conducted a preliminary investigation and without giving the accused (petitioner) notice and opportunity to be heard. On 5 June 1969, this Court dismissed the petition, but without prejudice to petitioner's filing with the court a quo of an appropriate motion for the conducting of a preliminary investigation and for the suspension in the meantime of criminal proceedings.

"Conformably with the aforesaid resolution, petitioner filed with the lower court a motion to allow the holding of a preliminary investigation of the case, on the same ground of lack of preliminary investigation. On 14 June 1969, this motion was denied, the court below pointing out that the information carried a verified certification by the provincial fiscal that he had conducted the required preliminary investigation on the case. Nevertheless, considering that said fiscal had been appointed to the judiciary, the court ventured the opinion that there was nothing wrong in the incumbent Provincial Fiscal's conducting a reinvestigation or review of the evidence in the hands of the prosecution. Thus, the latter was given 30 days from receipt of the order within which to signify in writing whether or not he deemed it necessary to conduct a reinvestigation of the case.

"As the Provincial Fiscal B. Jose Castillo, however, manifested that no reinvestigation of the case could be made without any petition to this effect from the accused, Luciano filed on 12 July 1969 a request for the fiscal to conduct a preliminary investigation and/or reinvestigation. Because of these incidents, petitioner's arraignment had to be postponed several times. On 13 September 1969, the Provincial Fiscal granted petitioner's request for reinvestigation, the court being notified thereof. On 15 September 1969, petitioner Luciano was arraigned and entered a plea of not guilty to the charge. Thereupon, the court set the trial of the case for 15 October 1969 without prejudice to the outcome of the re-investigation.

"Finally, in a written manifestation dated 15 December 1969, the Provincial Fiscal informed the court that he had conducted a preliminary investigation and/ or reinvestigation of the case, with notice to the parties, on 18 October 1969; that on said date, counsel for the petitioner manifested that the evidence previously submitted to State Prosecutor Edilberto Barot, Jr. be considered and upon receipt of the respective memoranda of the Police Commission and the petitioner, the case be deemed submitted for resolution; and that taking into consideration the aforesaid evidence previously adduced together with the memoranda of the Police Commission and the petitioner, the case be deemed submitted for resolution; and that taking into consideration the aforesaid evidence previously adduced together with the memoranda of the parties he (the fiscal) believed that there existed sufficient evidence to establish prima facie the guilt of the accused. On the same day, 15 December 1969, the court issued an order in Criminal Case No. 19346, suspending the accused Jose C. Luciano from public office pursuant to Section 13 of Republic Act 3019. '(I)t appearing that the information charging accused is sufficient in form and substance and the validity of said information is apparent.' Immediately, the accused filed with the respondent court an urgent motion for reconsideration of said order and for the holding in abeyance of the suspension-directive. It also appears from the record that at 2:45 in the afternoon of that day, 15 December 1969, respondent Johnny Wilson, the Acting Vice-Mayor, took an oath of office as Acting Mayor of Makati before a judge of the Court of First Instance of Rizal. On 16 December 1969, Luciano instituted the present proceeding in this Court, originally against Johnny Wilson (who apparently did not press his intention to occupy the position of Acting Mayor) and the Provincial Governor of Rizal only, which was given due course on the same day. And, acting on petitioner's prayer, we issued a temporary restraining order against respondent Provincial Governor, to prevent him from appointing respondent Wilson as Acting Mayor of Makati, Rizal, and the latter from usurping and intruding into the office of petitioner as Acting Mayor. This Court likewise directed petitioner to include as parties respondent the Judge of the Court of First Instance of Rizal before whom Criminal Case No. 19346 was pending, and the People of the Philippines. This, the petitioner did; thus, on 19 December 1969, this Court issued another temporary restraining order to include in the prohibition the enforcement by the respondent Judge of his automatic suspension order of 15 December 1969 against the petitioner, and the ordering or causing of the latter's arrest for performing the duties of Acting Mayor of Makati."

This Court's resolution in said precursor case of Luciano vs. Wilson specified Luciano's two grounds for assailing the legality of the same respondent court's "automatic suspension order of 15 December 1969" as follows: "(a) that he was denied his day in court when the respondent Judge reached the conclusion that the information is valid, without affording him opportunity to be heard; and (b) that the information does not charge an indictable offense under Republic Act 3019, and that no preliminary investigation was conducted in accordance with law."

As further narrated therein, "(A)fter the case was submitted and while pending decision by this Court, respondent Johnny Wilson filed, on 30 June 1970, a motion to the effect that, abandoning his previous stand, said respondent was willing to confess judgment in all material points re-levant to the issue of holding a hearing to determine the validity of an in-formation filed under the Anti-Graft and Corrupt Practices Act, x x x. Counsel for other respondents,[2] required to comment, manifested conformity to Wilson's motion."

This Court thereupon stated the following grounds and considerations for granting Wilson's motion: "(C)onsidering that the basic stand of petitioner Luciano, assented to by respondent Wilson in his motion, that there should have been a hearing on the validity of the information, appears conformable to the spirit of the law, taking into account the serious and far reaching consequences of a suspension of an elected public official even before his conviction; and considering that public interest demands a speedy determination of the issues involved in this case as well as in the case pending against petitioner in the branch of the Court of First Instance of Rizal presided by respondent Judge Herminio Mariano, this Court is of the opinion that the motion should be granted. In the hearing thus to be held, petitioner's submission that the information charges no indictable offense and that no due preliminary investigation was made by the Provincial Fiscal, can be fully ventilated,"[3] and accordingly resolved, inter alia,

x x x x x

"(2) To set aside the order of 15 December 1969, issued by respondent Judge Herminio Mariano in Criminal Case No. 19346 of the Court of First Instance of Rizal, suspending petitioner Jose C. Luciano from office;

"(3) To direct said respondent Judge Mariano to forthwith hold a hearing on the validity of the information filed in said Criminal Case No. 19346 and the claimed lack of proper preliminary investigation, and determine such issues as soon as practicable; and

"(4) Should he find in favor of the prosecution, to hear and decide the criminal case on its merits."[4]

Accordingly, respondent court was called upon to hold a hearing on the validity of the information[5] for violation of the Anti-Graft Law, at which hearing "petitioner's submission that the information charges no indictable offense and that no due preliminary investigation was made by the provincial fiscal, can be fully ventilated," as directed in this Court's above-quoted Resolution of August 31, 1970.

At a preliminary hearing held on October 12, 1970 in connection with petitioner's urgent motion for production and copying of documents, respondent court expressed doubts as to the nature of and procedure at the hearing to be held by it in compliance with this Court's Resolution, thus:

"Court: You will note that order of the Supreme Court did not lay down the necessary ruling to be adopted by this court to determine the validity of the information or if there is a preliminary investigation. Neither is there a provision in the Supreme Court to determine the invalidity of the information and lack of preliminary investigation, then this court will resolve as to how. Under Rule 135, Section 6, it is provided for therein how this court shall determine the validity of the information. That is in answer to this. I think you will not deny this court has already jurisdiction. What means or the procedure to be followed or adopted so by tomorrow the court will invite the parties. How would you like to determine the validity. Would you like to present your evidence or would you like to argue? Because there is no specific rule. So we are going to adopt suitable ways. The Court will ask the prosecution if it is the turn of the prosecution in this case. Is there preliminary investigation? Is there a valid information? (sic).

What is the stand of the defense?

Is there a preliminary investigation?

Whatever is the answer, he who will claim there is none should prove the same. That is the process that we will adopt tomorrow." [6]

Petitioners' counsel submitted that the proper procedure "to determine the validity of the information is to hear the motion to quash" dated December 16, 1969 and left unresolved during the pendency in this Court of Luciano vs. Wilson. [7] Respondent court gave respondent fiscal, if he so wished, up to the afternoon of that same day, October 12, 1970, within which to submit his answer thereto. [8]

The required hearing was finally commenced by respondent court in the afternoon of October 26, 1970. The hearing centered on discussions whether there had been due preliminary investigation of the graft charge against petitioners, [9] since the complaint filed against them was admittedly for falsification which was dismissed by the investigating fiscal, State prosecutor Barot with the concurrence of then pro-vincial fiscal (now judge) Benjamin Aquino, who, however, considered the evidence sufficient to sustain the filing of the graft charge. As to the other issue of the validity of the information, petitioners' counsel submitted that it depended on respondent court's resolution on the first issue of whether there had been due preliminary investigation and "then we can meet again depending on the resolution that the court may hand down on this first incident." [10]

Respondent court terminated the hearing after securing the parties' stipulation "that at first instance, the case which was filed is falsification against the accused in this case. That it was dismissed after Fiscal Barot conducted the preliminary investigation; that then Provincial Fiscal Benjamin Aquino, now Judge of the Court of First Instance considered the evidence that while it may not sustain the charge of falsification it can sustain the charge of violation of the Anti-graft (Law); [11] and asking as to what would be done on the rest of the scheduled dates of nearing, to which petitioners' counsel, by way of reply, "pray(ed) to cancel these hearings until your honor has resolved this issue," [12] and the incident was declared submitted.

Without further ado, respondent court thereafter issued its disputed order of 15 December 1970, wherein it "holds and so rules that there has been a preliminary investigation held in this case, and that the information is valid."

I. On the first issue of whether there had been a proper preliminary investigation of the graft charge prior to the filing of the information therefor against petitioners, respondent court, in ruling affirmatively, relied on the same written manifestation dated 15 December 1969 of respondent fiscal Castillo of his having conducted on October 18, 1969 "a preliminary investigation and/or reinvestigation" (which had already been considered and in effect found far from conclusive in Luciano vs. Wilson) and declared that:

"x x x At the reinvestigation conducted by Provincial Fiscal B. Jose Castillo by virtue of their aforementioned petition, the accused instead of presenting evidence in their defense in order to offset the evidence of the prosecution, merely submitted the evidence presented at the preliminary investigation conducted by State Prosecutor Barot, and rested their fate in the hands of Provincial Fiscal Castillo, knowing that he may decide the matter for or against the accused. Indeed, notwithstanding the fact that all the opportunities were open at the reinvestigation for the accused to exercise their rights afforded them by law, probably carried by over confidence and belief that the Provincial Fiscal would render a verdict in their favor, the accused folded their arms and chose not to exercise such rights. Perhaps if the resolution of the Fiscal was in their favor, the accused would no longer complain. Now that the Fiscal has manifested that based on the evidence presented at the reinvestigation, he believes that a prima facie case exists against the accused, they cannot anymore invoke the same rights and press for another preliminary investigation. The Provincial Fiscal is not bound by the qualification of the crime designated in the complaint filed with his Office. Rather, he is guided by the evidence presented in the course of a preliminary investigation and on the basis of which he may formulate and designate the offense and file the corresponding information.

"x x x x The Provincial Fiscal may simply rely on the records of the case on the basis of which he can draw his

conclusion, which was exactly what then Provincial Fiscal Aquino did. Certainly, even granting that an error had been committed in that the accused were given a preliminary investigation on the charge of falsification but were subsequently charged with violation of the Anti-Graft and Corrupt Practices Act under the same preliminary investigation, which the Court does not subscribe to be an error, yet such alleged error had been cured by the reinvestigation conducted by Provincial Fiscal Castillo which lasted for three months and which partook of the nature of a preliminary investigation."^[13]

Respondent court had reason to fault petitioners and their counsel for their imprudence and "overconfidence" in "folding their arms" and apparently choosing not to exercise their rights of confronting and cross-examining the complainant and witnesses against them and adducing their own evidence, when respondent Castillo called the case for reinvestigation on October 18, 1969. But respondent court's factual conclusions that fiscal Castillo had indeed conducted a reinvestigation and reviewed the evidence were far from accurate. As late as the date the present petition was heard by the Court on January 19, 1971, the stenographic notes of all testimonial evidence given before state prosecutor Barot^[14] during the hearings at the preliminary investigation of the original charge for falsification had not yet been transcribed and could not therefore be reviewed. Upon interpellation, Fiscal Castillo confirmed this fact, as well as the further fact that neither Fiscal Aquino nor the stenographer had apprised him of the contents of said notes. Fiscal Castillo could not therefore inform this Court of the factual and legal bases for the information filed by his predecessor in office^[15] and consequently manifested in open court his readiness and willingness to conduct a preliminary investigation in fairness to petitioners.

Legally, respondent court's theory that under the same preliminary investigation for the crime of falsification which was ordered dismissed by the investigating fiscal with the approval of then provincial fiscal Aquino and fiscal Castillo as being "without any factual or legal basis", that petitioners could nevertheless be charged on the basis of the records with the graver crime of violation of the Anti-graft and Corrupt Practices Law, the pendency of which under a valid information carries mandatory suspension from office,^[16] has been rejected by this Court. In *Bandiala vs. Court of First Instance of Misamis Occidental*,^[17] where the preliminary investigation was for robbery in band (with one of the two accused waiving the "second stage"), the Court held that the provincial fiscal could not file against the accused an information for the graver crime of robbery with kidnapping, without giving the accused "ample opportunity at a full-blown preliminary investigation to demonstrate that what the fiscal regards as 'kidnapping' in the legal sense was merely an incident of, and is therefore absorbed in the crime of robbery." The Court noted once again that "(A) preliminary investigation, it must be borne in mind, is a practical device created by statute and by mandate of our Rules of Court, principally for the purpose of preventing hasty, malicious and ill-advised prosecutions," and pointedly emphasized that "(T)he Rules of Court on the matter of preliminary investigation, construed in their integrated entirety, direct that, in the circumstances here obtaining, the Fiscal, if he believes that he should raise the category of the offense, must conduct a preliminary investigation anew as to the entire charge. Fundamental principles of fair play dictate this course of action. The Fiscal is not allowed by the Rules of Court to wait in ambush; the role of a Fiscal is not mainly to prosecute, but essentially to do justice to every man and to assist the courts in dispensing that justice. "

II. On the second issue of the validity of the information, respondent court evidently failed to appreciate the full import of this Court's resolution of August 31, 1970 that it hold a hearing at which "petitioners' submission that the information charges no indictable offense... can be fully ventilated." Respondent court held no hearing whatsoever on this second issue, disregarding petitioners' prayer at the hearing of October 26, 1970 that it reset the issue for the required hearing should it resolve adversely, as it did, the first issue of whether there had been due preliminary investigation. Relying simply on the ritualistic recitation of the necessary averments for sufficient information,^[18] respondent court summarily ruled in its questioned order as follows:

"No doubt a cursory reading of the information filed in this case will show that it is sufficient in form and

substance because it contains all the elements prescribed by law, to wit: the designation of the offense by the statute, the name of the accused, the act or omission complained of as constituting the offense, the name of the offended party, the approximate time of the commission of the offense, and the place where the offense was committed. The Court cannot, therefore, but rule that the information is valid and the Court having found, as above stated, that proper preliminary investigation had been conducted, what remains for the Court to do is to try the case on the merits."^[19]

Respondent court's preemptory ruling and advance pronounce-ment that what remained for it to do "is to try the case on the merits" rendered moot the petitioners' pending motion to quash and its scheduling the same for hearing on December 21 - 23, 1970, in the light of its frequent references at the preliminary hearing of October 13, 1970,^[20] to this Court's "overwhelming statements" in *Luciano vs. Prov. Governor*,^[21] to the effect that "suspension is a sequel to that finding (of a valid information), an incident to the criminal proceedings before the Court" and that "under section 13 of the Anti-Graft and Corrupt Practices Act, once a valid information upon the provisions thereof is lodged with the Court of First Instance, that court has the inescapable duty to suspend the public official indicted thereunder." These statements were however taken by respondent court out of context, for in the said case of *Luciano vs. Prov. Governor*, the suspension order against Mayor Estrella, et al. as upheld by this Court came only in the trial court's judgment of conviction and the validity of the information could no longer be questioned and was not in issue.

III. (a) Under the facts and circumstances here obtaining, as discussed hereinabove, the Court finds that since the information for alleged violation of the Anti-graft Law was filed without any previous notice to petitioners and due preliminary investigation thereof, and despite the dismissal of the original charge for falsification as being "without any factual or legal basis", petitioners are entitled to a new preliminary investigation for the graft charge, with all the rights to which they are entitled under section 1 of Republic Act No. 5180, approved September 8, 1967, as invoked by them anew from respondent court, viz, the submittal of the testimonies in affidavit form of the complainant and his witnesses duly sworn to before the investigating fiscal, and the right of accused, through counsel, to cross-examine them and to adduce evidence in their defense. In line with the settled doctrine as restated in *People vs. Abejuela*,^[22] respondent court shall hold in abeyance all proceedings in the case before it until after the outcome of such new preliminary investigation.

(b) Should respondent fiscal, after such preliminary investigation, find sufficient evidence to establish prima facie the guilt of the accused and therefore maintain the information for violation of Republic Act No. 3019 as filed and so inform the lower court, then the trial court must hold a hearing on the validity of the information and make an affirmative finding of validity thereof, before it can issue the order of suspension from office of petitioner Luciano.

This procedure was first indicated in the leading case of *Luciano vs. Prov. Governor*, supra, where we stated that "in line with the statutory text of Section 13, the suspension spoken of follows the pendency in court of a criminal prosecution under a 'valid information'. Adherence to this rigoristic requirement funnels us down to no other conclusion than that there must, first of all, be a determination that the information filed is valid before suspension can be effected. This circumstance militates strongly against the notion that suspension is automatic. Suspension is, however, mandatory." In the subsequent case of *Luciano vs. Wilson*, supra, the Court, in requiring such pre-suspension hearing, held definitely that "a hearing on the validity of the information appears conformable to the spirit of the law, taking into account the serious and far reaching consequences of a suspension of an elected public official, even before his conviction and that public interest demands a speedy determination of the issues involved in (the) case." The Court has again this month reiterated such requirement in *Oliveros vs. Villaluz*, L-33362, wherein we set aside the suspension order issued without prior hearing by the trial court against petitioner mayor of Antipolo, Rizal, as being "premature and in grave abuse of discretion."

(c) By way of broad guidelines for the lower courts in the exercise of the power of suspension from office of public officers charged under a valid information under the provisions of Republic Act 3019 or under the provisions of the Revised Penal Code on bribery, pursuant to section 13 of said Act,[23] it may be briefly stated that upon the filing of such information, the trial court should issue an order with proper notice requiring the accused officer to show cause at a specific date of hearing why he should not be ordered suspended from office pursuant to the cited mandatory provisions of the Act. Where either the prosecution seasonably files a motion for an order of suspension or the accused in turn files a motion to quash the information or challenges the validity thereof, such show-cause order of the trial court would no longer be necessary. What is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information, and thereafter hand down its ruling, issuing the corresponding order of suspension should it uphold the validity of the information or withholding such suspension in the contrary case.

(d) No specific rules need be laid down for such pre-suspension hearing. Suffice it to state that the accused should be given a fair and adequate opportunity to challenge the validity of the criminal proceedings against him, e. g. that he has not been afforded the right of due preliminary investigation; that the acts for which he stands charged do not constitute a violation of the provisions of Republic Act No. 3019 or of the bribery provisions of the Revised Penal Code which would warrant his mandatory suspension from office under section 13 of the Act; or he may present a motion to quash the information on any of the grounds provided in Rule 117 of the Rules of Court. The mandatory suspension decreed by the Act upon determination of the pendency in court of a criminal prosecution for violation of the Anti-graft Act or for bribery under a valid information requires at the same time that the hearing be expeditious, and not unduly protracted such as to thwart the prompt suspension envisioned by the Act. Hence, if the trial court, say, finds the ground alleged in the quashal motion not to be indubitable, then it shall be called upon to issue the suspension order upon its upholding the validity of the information and setting the same for trial on the merits.

(e) In the case at bar, ruling on the validity of the information is to be held in abeyance until after the outcome of the preliminary investigation to be conducted by respondent provincial fiscal of the graver charge of alleged violation of the Anti-Graft Law, and hence no suspension order can issue. Should the fiscal find no case, he will then so inform respondent court and move to dismiss the case. In the contrary case, respondent court will then have to hear and decide petitioners' pending motion to quash before it, which squarely raises the question that the facts charged do not constitute an offense and are not punishable under section 3 (a) and (e) of Republic Act No. 3019, contrary to the information's averment.

(Investigating prosecutor Barot's resolution of May 14, 1969 recommending the dismissal of the charge of falsification of public documents against petitioners found "that the investigation conducted by the Police Commission was half-hazardly done and that it did not fully bring to the attention of the investigating officer the existing supporting documents attesting to the regularity of the appointment of Florentino S. Rolls as patrolman of the Makati Police Department." [24] [The complaint had charged that Rolls had collected and received salaries as patrolman "without having been previously qualified and appointed as such."] Then provincial fiscal, now judge, Aquino, in his last-act-in-office resolution of May 30, 1969,[25] in sustaining prosecutor Barot's dismissal of the charge of falsification, however, considered that the appointment of Rolls, Luciano's brother-in-law [admittedly a civil service eligible with chief of police eligibility] to the Makati Police Department and his assignment to then councilor Luciano, as vice-chairman of the municipal council's police committee, was a case of "rampant nepotism, favoritism and misuse of influence which shakens the confidence of the people in their police forces" and that since "there is no evidence to establish that Pat. Rolls had actually performed this work" [of following up the approval of pending appointments of members and employees of the police department, awaiting process and review by the Civil Service Commission],[26] ordered the filing under his signature on the same day of the

information for violation of Republic Act No. 3019 against petitioners.)

The prejudicial legal question raised by the pending quashal motion that respondent court would then have to rule upon may be thus formulated: did then Mayor Estrella's appointment of Rolls (Luciano's brother-in-law) as municipal patrolman, upon then Councilor Luciano's recommendation and influence and Rolls' assignment by the then chief of police to Luciano's office constitute a violation of section 3 (a) and (e) of Republic Act No. 3019[27] as charged in the challenged information?[28]

ACCORDINGLY, the writ of certiorari is granted and respondent court's order of 15 December 1970 in Criminal Case No. 19346 is set aside and annulled. Respondent court is further directed to hold in abeyance all proceedings in said case until after the outcome of the new preliminary investigation herein ordered, and thereafter to proceed in accordance with law as hereinabove indicated. The writ of mandamus is granted against respondent provincial fiscal who is hereby directed to conduct in accordance with law a preliminary investigation of the charge against petitioners for violation of Republic Act No. 3019 as alleged in the information in Criminal Case No. 19346. No costs.

Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, and Barredo, JJ., concur.
Concepcion, C.J., Makasiar, Fernando, and Villamor, JJ., did not take part.
Dizon, J., on official leave.

[1] L-31347, reported in 34 SCRA 638.

[2] These other respondents were Hon. Isidro S. Rodriguez, as provincial governor of Rizal; Hon. Herminio C. Mariano, judge, Court of First Instance of Rizal, and People of the Philippines.

[3] Emphasis supplied.

[4] Idem.

[5] This information dated May 29, 1969 alleges: "(T)hat on or about and between November 12, 1966 and February 15, 1967, in the municipality of Makati, province of Rizal, a place within the jurisdiction of this Honorable Court, the accused Jose Luciano, being then a municipal councilor of Makati, Rizal, with the use of the influence of his office, did, then and there, willfully, unlawfully and feloniously procure, persuade, induce and influence the appointment of the accused Florentino Rolls as a member of the police department of said municipality, and once appointed, also with the influence of his office, had said Florentino Rolls detailed with him as municipal councilor of Makati until the date of the resignation of said Florentino Rolls on February 15, 1967 as a patrolman of Makati, Rizal, even without said Flo-rentino Rolls reporting for duty on the date that he assumed office and until he resigned therefrom as aforestated, without actually performing any function or duty as a police officer of Makati, but in conspiracy with the accused Jose Luciano, the two of them mutually helping and aiding one another, at one time and on several occasions, were able to collect his salaries as patrolman during the same period at the rate of P200.00 a month in violation of the rules and regulations promulgated by the police commission for the efficiency of all police forces of the Philippines, and by such acts caused unwarranted benefit, advantage and preference to be obtained by the accused Florentino Rolls and causing undue injury to the municipal government of Makati and to the efficiency of the public service expected to be rendered by the police force of said municipality, in violation of Section 3, paragraphs (a) and (e), of Republic Act No. 3019. "

[6] T. s. n., pp. 44-46, Annex F, Petition.

[7] Idem, pp. 47-49.

[8] Idem, p. 53.

[9] T. s. n. of October 26, 1970, Annex C, Petition.

[10] Idem, p. 32.

[11] Idem, pp. 35-36.

[12] Idem, p. 37.

[13] Order of 15 Dec. 1970, Annex A, Petition.

[14] Annex L, Petition.

[15] He, however, expressed a theory that suspended Mayor Estrella and the municipal chief of police might have conspired with petitioners in the commission of the crime charged and might have to be included in the information.

[16] Luciano vs. Prov. Governor, 28 SCRA 517 (June 20, 1969).

[17] 35 SCRA 237 (Sept. 30, 1970), per Ruiz Castro, J.

[18] See Rule 110, sec. 5.

[19] Annex A, petition; emphasis furnished.

[20] See T. S. N. of Oct. 13, 1970, p. 50 et seq., Annex B, petition.

[21] Supra, fn. 16.

[22] 38 SCRA 324 (Mar. 31, 1971).

[23] Section 13 of the Act provides:

"SEC. 13. Suspension and loss of benefits. - Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery 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. "

[24] Annex M, petition.

[25] Annex I, Answer.

[26] Petitioners had cause to complain of this cited void of evidence, since Rolls had never been charged on this point nor given an opportunity to present the evidence.

[27] The punishable acts are thus defined in the Act:

"(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

"(e) Causing any undue injury to any party, including the Government, or giving any private party any

unwarranted bene-fits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partia-lity, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. " (Sec. 3, R. A. 3019)

[28] These guidelines for the case at bar are specifically made, since this is the second time that the same issues have reached this Court, and to obviate respondent court's doubts thereon, *supra*, pp. 6-7.

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