

**ISHMAEL HIMAGAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND HON. JUDGE HILARIO MAPAYO, RTC, BR. 11, DAVAO CITY,
RESPONDENTS.***G.R. No. 113811. October 07, 1994*

Ponente: KAPUNAN, J.

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Petitioner, a policeman assigned with the medical company of the Philippine National Police Regional Headquarters at Camp Catitigan, Davao City, was implicated in the killing of Benjamin Machitar, Jr. and the attempted murder of Bernabe Machitar. After the informations for murder[1] and attempted murder[2] were filed with the Regional Trial Court, Branch 11, Davao City, on September 16, 1992, the trial court issued an Order suspending petitioner until the termination of the case on the basis of Section 47, R.A. 6975, otherwise known as Department of Interior and Local Government Act of 1990, which provides:

SEC. 47. Preventive Suspension Pending Criminal Case. - Upon the filing of a complaint or information sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed by law is six (6) years and one (1) day or more, the court shall immediately suspend the accused from office until the case is terminated. Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused. (Underscoring ours).

On October 11, 1993, petitioner filed a motion to lift the order for his suspension,[3] relying on Section 42 of P.D. 807 of the Civil Service Decree, that his suspension should be limited to ninety (90) days and, also, on our ruling in *Deloso v. Sandiganbayan*,[4] and *Layno v. Sandiganbayan*. [5] In his order dated December 14, 1993[6] respondent judge denied the motion pointing out that under Section 47 of R.A. 6975, the accused shall be suspended from office until his case is terminated. The motion for reconsideration of the order of denial was, likewise, denied.[7] Hence, the petition for certiorari and mandamus to set aside the orders of respondent Judge and to command him to lift petitioner's preventive suspension.

We find the petition devoid of merit.

There is no question that the case of petitioner who is charged with murder and attempted murder under the Revised Penal Code falls squarely under Sec. 47 of RA 6975 which specifically applies to members of the PNP. In dispute however, is whether the provision limits the period of suspension to 90 days, considering that while the first sentence of Sec. 47 provides that the accused who is charged with grave felonies where the penalty imposed is six (6) years and one (1) day shall be suspended from office "until the case is terminated", the second sentence of the same section mandates that the case, which shall be subject to continuous trial, shall be terminated within 90 days from the arraignment of the accused.

Petitioner posits that as a member of the Philippine National Police, under Sec. 91 of RA 6975 which reads:

SEC. 91. The Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department.,

he is covered by the Civil Service Law, particularly Sec. 42 of PD 807 of the Civil Service Decree, which limits the maximum period of suspension to ninety (90) days, thus:

SEC. 42. Lifting of Preventive Suspension Pending Administrative Investigation.- When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service; Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

He claims that an imposition of preventive suspension of over 90 days is contrary to the Civil Service Law and would be a violation of his constitutional right to equal protection of laws. He further asserts that the requirements in Sec. 47 of R.A. 6975 that "the court shall immediately suspend the accused from office until the case is terminated" and the succeeding sentence, "Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused" are both substantive and should be taken together to mean that if the case is not terminated within 90 days, the period of preventive suspension must be lifted because of the command that the trial must be terminated within ninety (90) days from arraignment.

We disagree.

First. The language of the first sentence of Sec. 47 of R.A. 6975 is clear, plain and free from ambiguity. It gives no other meaning than that the suspension from office of the member of the PNP charged with grave offense where the penalty is six years and one day or more shall last until the termination of the case. The suspension cannot be lifted before the termination of the case. The second sentence of the same Section providing that the trial must be terminated within ninety (90) days from arraignment does not qualify or limit the first sentence. The two can stand independently of each other. The first refers to the period of suspension. The second deals with the time frame within which the trial should be finished.

Suppose the trial is not terminated within ninety days from arraignment, should the suspension of accused be lifted? The answer is certainly no. While the law uses the mandatory word "shall" before the phrase "be terminated within ninety (90) days", there is nothing in R.A. 6975 that suggests that the preventive suspension of the accused will be lifted if the trial is not terminated within that period. Nonetheless, the Judge who fails to decide the case within the period without justifiable reason may be subject to administrative sanctions and, in appropriate cases where the facts so warrant, to criminal^[8] or civil liability.^[9] If the trial is unreasonably delayed without fault of the accused such that he is deprived of his right to a speedy trial, he is not without a remedy. He may ask for the dismissal of the case. Should the court refuse to dismiss the case, the accused can compel its dismissal by certiorari, prohibition or mandamus, or secure his liberty by habeas corpus.^[10]

Second. Petitioner misapplies Sec. 42 of PD 807. A meticulous reading of the section clearly shows that it refers to the lifting of preventive suspension in pending administrative investigation, not in criminal cases, as here. What is more, Section 42 expressly limits the period of preventive suspension to ninety (90) days. Sec. 91 of R.A. 6975 which states that "The Civil Service Law and its implementing rules shall apply to all personnel of the Department" simply means that the provisions of the Civil Service Law and its implementing rules and regulations are applicable to members of the Philippine National Police insofar as the provisions, rules and regulations are not inconsistent with R.A. 6975. Certainly, Section 42 of the Civil Service Decree which limits the preventive suspension to ninety (90) days cannot apply to members of the PNP because Sec. 47 of R.A. 6995 provides differently, that is, the suspension where the penalty imposed by law exceeds six (6) years shall continue until the case is terminated.

Third. Petitioner's reliance on Layno and Deloso is misplaced. These cases all stemmed from charges in violation of R.A. 3019 (1060), otherwise known as the Anti-Graft and Corrupt Practices Act which, unlike R.A. 6975, is silent on the duration of the preventive suspension. Sec. 13 of R.A. 3019 reads as follows:

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.

In the case of Layno, the duly elected mayor of Lianga, Surigao del Sur, was preventively suspended after an information was filed against him for offenses under R.A. 3019 (1060), the Anti-Graft Corrupt Practices Act. He had been suspended for four (4) months at the time he filed a motion to lift his preventive suspension. We held that his indefinite preventive suspension violated the "equal protection clause" and shortened his term of office. Thus:

2. Petitioner is a duly elected municipal mayor of Lianga, Surigao del Sur. His term of office does not expire until 1986. Were it not for this information and the suspension decreed by the Sandiganbayan according to the Anti-Graft and Corrupt Practices Act, he would have been all this while in the full discharge of his functions as such municipal mayor. He was elected precisely to do so. As of October 26, 1983, he has been unable to. It is a basic assumption of the electoral process implicit in the right of suffrage that the people are entitled to the services of elective officials of their choice. For misfeasance or malfeasance, any of them could, of course, be proceeded against administratively or, as in this instance, criminally. In either case, his culpability must be established. Moreover, if there be a criminal action, he is entitled to the constitutional presumption of innocence. A preventive suspension may be justified. Its continuance, however, for an unreasonable length of time raises a due process question. For even if thereafter he were acquitted, in the meanwhile his right to hold office had been nullified. Clearly, there would be in such a case an injustice suffered by him. Nor is he the only victim. There is injustice inflicted likewise on the people of Lianga. They were deprived of the services of the man they had elected to serve as mayor. In that sense, to paraphrase Justice Cardozo, the protracted continuance of this preventive suspension had outrun the bounds of reason and resulted in sheer oppression. A denial of due process is thus quite manifest. It is to avoid such an unconstitutional application that the order of suspension should be lifted.

3. Nor is it solely the denial of procedural due process that is apparent. There is likewise an equal protection question. If the case against petitioner Layno were administrative in character the Local Government Code would be applicable. It is therein clearly provided that while preventive suspension is allowable for the causes therein enumerated, there is this emphatic limitation on the duration thereof: "In all cases, preventive suspension shall not extend beyond sixty days after the start of said suspension." It may be recalled that the principle against indefinite suspension applies equally to national government officials. So it was held in the leading case of *Garcia v. Hon. Executive Secretary*. According to the opinion of Justice Barrera: "To adopt the theory of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution and the Civil Service law." Further: "In the guise of a preventive suspension, his term of office could be shortened and he could in effect, be removed without a finding of a cause duly established after due hearing, in violation of the Constitution. Clearly then, the policy of the law mandated by the Constitution frowns at a suspension of indefinite duration. In this particular case, the mere fact that petitioner is facing a charge under the Anti-Graft and Corrupt Practices Act does not justify a different rule of law. To do so would be to negate the safeguard of the equal protection guarantee.[11]

The case of Deloso, likewise, involved another elective official who was preventively suspended as provincial governor, also under RA 3019 the Anti-Graft Law. This Court, faced with similar factual circumstances as in Layno, applied the ruling in the latter case "in relation to the principles of due process and equal protection."

It is readily apparent that Section 13 of R.A. 3019 upon which the preventive suspension of the accused in Layno and Deloso was based is silent with respect to the duration of the preventive suspension, such that the suspension of the accused therein for a prolonged and unreasonable length of time raised a due process question. Not so in the instant case. Petitioner is charged with murder under the Revised Penal Code and it is undisputed that he falls squarely under Sec. 47 of R. A. 6995 which categorically states that his suspension shall last until the case is terminated. The succeeding sentence of the same section requires the case to be subjected to continuous trial which shall be terminated within ninety (90) days from arraignment of the accused. As previously emphasized, nowhere in the law does it say that after the lapse of the 90-day period for trial, the preventive suspension should be lifted. The law is clear, the ninety (90) days duration applies to the trial of the case not to the suspension. Nothing else should be read into the law. When the words and phrases of the statute are clear and unequivocal, their meaning determined from the language employed and the statute must be taken to mean exactly what it says.[12]

Fourth. From the deliberations of the Bicameral Conference Committee on National Defense relative to the bill that became R.A. 6975, the meaning of Section 47 of R.A. 6975 insofar as the period of suspension is concerned becomes all the more clear. We quote:

So other than that in that particular section, ano ba itong 'Jurisdiction in Criminal Cases?' What is this all about?

REP. ZAMORA. In case they are charged with crimes.

THE CHAIRMAN (SEN. MACEDA). Ah, the previous one is administrative, no. Now, if it is charged with a crime, regular courts.

SEN. GONZALES. Ano, the courts mismo ang magsasabing . . .

THE CHAIRMAN (SEN. MACEDA). No, the jurisdiction.

REP. ZAMORA. The jurisdiction if there is robbery.

THE CHAIRMAN (SEN. MACEDA). Okay. 'Preventive Suspension Pending Criminal Case. Upon the filing of a complaint or informations sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed by law is six years and one day or more, the court shall immediately suspend the accused from the office until the case is terminated.'

REP. ALBANO. Where are we now Mr. Chairman.

THE CHAIRMAN (SEN. MACEDA). Grave felonies ito e. Six years and one day or more.

SEN. SAGUISAG. Kung five years and litigation ng Supreme Court, ganoon ba and . . . ?

THE CHAIRMAN (SEN. MACEDA). Hindi, dahil iyong iba panay disciplinary iyon e.

SEN. PIMENTEL. Anong page iyan, Rene?

THE CHAIRMAN (SEN. MACEDA). Page 29 - Preventive Suspension.

REP. GUTANG. Ang complaint kasi ng mga tao, pagka may pulis na may criminal case at may baril pa rin at nag-uuniforme, hindi magandang tingnan e. So parang natatakot iyong mga witnesses.

SEN. GONZALES. Anyway, kung ma-exempt na rito naman siya e.

REP. GUTANG. Mayroong entitlement to reinstatement and pay. x x x

x x x x x x

SEN. PIMENTEL. Dito sa 'Preventive Suspension Pending Criminal Case.' Okay ito but I think we should also mandate the early termination of the case. Ibig sabihin, okay, hindi ba 'the suspension of the accused from office until the case is terminated?' Alam naman natin ang takbo ng mga kaso rito sa ating bansa e.

REP. ZAMORA. Twenty days, okay na.

SEN. PIMENTEL. Hindi, and ibig kong sabihin, let us just assume that a case can be, as Rene pointed out, can run to six years bago ma-terminate, sometimes ten years pa nga e. Okay, but maybe we should mandate...

REP. ZAMORA. Continuous hearing.

SEN. PIMENTEL. Not only that, but the case must be terminated within a period.

REP. ALBANO. Ninety days na ho sa Supreme Court the trial.

SEN. PIMENTEL. Ha?

REP. ALBANO. The trial must be done within ninety days,

SEN. PIMENTEL. Ang ibig kong sabihin kung maaari sanang ilagay rito that the case shall also be terminated in one year from the time ... aywan ko kung kaya nating gawin iyon.

REP. ALBANO. One solution, Mr. Chairman.

THE CHAIRMAN (SEN. MACEDA). Criminal case? Hindi ba that has all been held as directory even if you put it in the law?

SEN. PIMENTEL. I know, but, iyon na nga, we are looking at some solution to a particular situation.

SEN. ANGARA. Let's have continuous hearing and be terminated not later than ninety days.

REP. ZAMORA. Ang point ni Ernie, that's really only the directory. All of these, well, looks exactly the same thing.

SEN. ANGARA. No, but at least, we will shorten it up in a case like this. We are really keen on having it quick, swift.

SEN. PIMENTEL. Swift justice.

REP. ALBANO. Mr. Chairman.

THE CHAIRMAN. (SEN. MACEDA). Yes.

REP. ALBANO. Following the Veloso case in Anti-graft cases before the Sandiganbayan, the preventive suspension is only ninety days. In no case shall it go beyond ninety days which can also be applicable here because this is a preventive suspension.

SEN. PIMENTEL. No, because you can legislate at least.

SEN. SAGUISAG. But then the case may be anti-graft ha. The case filed against a policeman may be anti-graft in nature...

SEN. PIMENTEL. Correct, correct, but is that a constitutional provision? Is it?

REP. ALBANO. No, but as a standard procedure.

SEN. PIMENTEL. Then you can legislate.

THE CHAIRMAN (SEN. MACEDA). No, because this particular provision is for criminal cases. I know anti-graft is a criminal case but here we are talking, let's say, of murder, rape, treason, robbery. That's why it is in that context that there is a difference between a purely anti-graft case and a criminal case which could be a serious case since it is six years and one day or more, so it must be already a grave felony.

x x x

REP. ALBANO. . . .

What I mean to say is, preventive suspension, we can use the Veloso case.

THE CHAIRMAN (SEN. MACEDA). No, that's too short, that's what I am saying. The feeling here is, for policeman, we have to be stricter especially if it is a criminal case.

What Rene is just trying to say is, he is agreeable that the suspension is until the case is terminated, but he just wants some administrative balancing to expedite it. So let us study what kind of language could be done along that line. So just on the National Police Commission ...

SEN. ANGARA. Can I suggest a language that may reflect ...

THE CHAIRMAN (SEN. MACEDA). Okay, please.

SEN. ANGARA. 'Such case shall be subject to continuous trial and be terminated not later than ...' whatever we agree.

THE CHAIRMAN (SEN. MACEDA). Okay, so let's study that.

So if there are any further amendments to Chapter 2 on the National Police Commission[13]

The foregoing discussions reveal the legislative intent to place on preventive suspension a member of the PNP charged with grave felonies where the penalty imposed by law exceeds six years of imprisonment and which suspension continues until the case against him is terminated.

The reason why members of the PNP are treated differently from the other classes of persons charged criminally or administratively insofar as the application of the rule on preventive suspension is concerned is that policemen carry weapons and the badge of the law which can be used to harass or intimidate witnesses against them, as succinctly brought out in the legislative discussions.

If a suspended policeman criminally charged with a serious offense is reinstated to his post while his case is pending, his victim and the witnesses against him are obviously exposed to constant threat and thus easily cowed to silence by the mere fact that the accused is in uniform and armed. The imposition of preventive suspension for over 90 days under Section 47 of R.A. 6975 does not violate the suspended policeman's constitutional right to equal protection of the laws.

The equal protection clause exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real differences among men, the equal protection clause does not demand absolute equality. It merely requires that all persons shall be treated alike, under like circumstances and conditions both as to the privileges conferred and liabilities enforced.[14] Thus, the equal protection clause does not absolutely forbid classifications, such as the one which exists in the instant case. If the classification is based on real and substantial differences;[15] is germane to the purpose of the law;[16]

applies to all members of the same class;^[17] and applies to current as well as future conditions,^[18] the classification may not be impugned as violating the Constitution's equal protection guarantee. A distinction based on real and reasonable considerations related to a proper legislative purpose such as that which exists here is neither unreasonable, capricious nor unfounded.

ACCORDINGLY, the petition is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., Cruz, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, and Mendoza, JJ., concur.

Feliciano, Padilla, and Bidin, JJ., on leave.

[1] Criminal Case No. 27, 148-92, Rollo, p. 30.

[2] Criminal Case No. 27,147-92, Rollo, p. 29.

[3] Rollo, pp. 32-33.

[4] 173 SCRA 409 (1989).

[5] 136 SCRA 536 (1985).

[6] Rollo, pp. 24-26.

[7] Id. at pp. 27-28.

[8] REVISED PENAL CODE, Art. 207. The penalty of prision correccional in its minimum period shall be imposed upon any judge guilty of malicious delay in the administration of justice.

[9] CIVIL CODE, Articles 27 and 32 provide:

ART. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

x x x

(16) The right of the accused . . . to have a speedy and public trial, ...

[10] Acebedo v. Sarmiento, 36 SCRA 247; Esguerra v. de la Costa, 66 Phil. 134; Kalaw v. Apostol, 64 Phil. 852.

[11] See note 5, supra, pp. 541-542.

[12] Pascual v. Pascual-Bautista, 207 SCRA 567.

[13] Senate and House Bicameral Conference Committee on National Defense, May 15, 1990, pp. 1-7.

[14] COOLEY, CONSTITUTIONAL LIMITATIONS, 824-825.

[15] Villegas vs. Hiu Chiong Tsai Pao Ho, 86 SCRA 270, 275 (1978).

[16] Ichong v. Hernandez, 101 Phil. 1155 (1957).

[17] Id., at p. 1176.

[18] Id.

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