ROGELIO JUAN, PEDRO DE JESUS, DELFIN CARREON AND ANTONIO GALGUERRA, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 132378. January 18, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Unlawful and unauthorized use of government property by incumbent public officers constitutes fraud. Thus, the provision on preventive suspension in the Anti-Graft Law applies to such officers even if the alleged violations are primarily considered as election offenses.

The Case

Before us is a Petition for Review under Rule 45 assailing the October 14, 1997 Decision[1] and the January 26, 1998 Resolution of the Court of Appeals[2] (CA) in CA-GR SP No. 43903.[3] The assailed Decision dismissed the Petition for Certiorari filed by the petitioners. In that Petition, they questioned the April 3, 1997 Order[4] of the Regional Trial Court of Quezon City in Criminal Case Nos. Q-96-64564-6, directing their immediate suspension from office. On the other hand, the questioned CA Resolution denied their Motion for Reconsideration.

The Facts

The procedural and factual antecedents of this case are summarized in the challenged Decision as follows:

> "Petitioners Rogelio Juan, Barangay Chairman and Pedro de Jesus, Delfin Carreon, and Antonio Galguerra, Barangay Kagawads, of Barangay Talipapa, Novaliches, Quezon City, were separately accused in Criminal Cases Q-96-64564 to 66, for violation of Section 261-(o) of the Omnibus Election Code, before the Regional Trial Court, Branch 96, National Capital Judicial Region, Quezon City. Barangay Chairman Juan, and Bgy. Kagawad De Jesus were charged [with] willful and unlawful use of VHF radio transceiver, an equipment or apparatus owned by the barangay government of Talipapa, Novaliches, Quezon City, for election campaign or for partisan political activity. And Barangay Kagawads Carreon and Galguerra were charged with willful and unlawful use of a tricycle owned by the same barangay government in their political campaigns.
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> "Rodolfo Cayubit and Ricardo Galguerra, representing themselves as "witnesses/private complainants," assisted by Atty. Leonides S. Bernabe, Jr., representing himself as "Private Prosecutor," filed a "Motion for Removal from Office," dated December 5, 1996, for the removal of said local elective officials, to which herein petitioners filed their comment, on the ground that movants have no legal standing in court, and neither was the public prosecutor notified of the motion to which he did not conform, and therefore, said motion should be expunged or stricken out from the records, or peremptorily denied.
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> "In a Manifestation and Comment to the accused-petitioners' comment, the COMELEC prosecutor stated that he "conforms" with the subject motion of private complainants, hence, respectfully submit[s] the same for the ruling of the court, followed by a Supplement to Motion for Removal from Office, dated February 28, 1997, to

which petitioners also filed their opposition.

"On April 3, 1997, respondent court issued an Order, directing the "xxx immediate suspension from office of all the accused xxx for a period of sixty (60) days from service of this Order."[5]

The CA Ruling

In its Decision, the Court of Appeals upheld the trial court's discretion to order petitioners' suspension from office. It ruled:

"The preventive suspension of those officials is authorized under Section 13 of RA 3019, as amended, which is mandatory in character upon the filing of a valid information in court against them. Such suspension can be issued 'x x x in whatever stage of execution and mode of participation, is pending in court x x x' (see also Gonzaga vs. Sandiganbayan, 201 SCRA 417, 422, 426). Said cases stressed though that the Constitution rejects preventive suspension for an indefinite duration as it constitutes a denial of due process and equal protection of the law. Nonetheless, preventive suspension is justifiable for as long as its continuance is for a reasonable length of time. This doctrine also finds expression in Luciano vs. Provincial Governor, 28 SCRA 570, upholding the power of courts to exercise the mandatory act of suspension of local elective official[s] under Section 13 of RA 3019."[6] (underscoring found in the original)

Hence, this Petition.[7]

The Issues

In their Memorandum, petitioners urge the Court to resolve the following questions:

"1. Does Sec. 13 of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act), or Sec. 60 of R.A. 7160 (The Local Government Code of 1991) confer upon a Regional Trial Court, before which a criminal case for violation of Sec. 261 (o) of the Omnibus Election Code is pending, the power and authority to order the preventive suspension from office of the accused therein upon the filing of a valid Information against him?

"2. In a criminal case for violation of Sec. 261 (o) of the Omnibus Election Code, where the INFORMATION does not allege damages sustained by any private party by reason thereof, has a person, representing himself to be a "witness/private complainant," or a lawyer, representing himself to be a "private prosecutor," the legal standing or personality to file a motion for removal from office of the accused in said criminal case?

'2.1. Does a motion so filed, acquire legal standing before the Court by the subsequent adoption thereof by the COMELEC Prosecutor in said case? Msesm

'2.2. Does a motion so filed, without compliance of the notice requirements prescribed for motions under Rule 15 of the Revised Rules of Court, deserve judicial cognizance by the court vis-a-vis Del Castillo v. Aguinaldo, 212 SCRA 169, 174, holding that such motion is "a useless piece of paper with no legal effect" that should not be accepted for filing and if filed, is not entitled to judicial cognizance?"

'2.3. Is there substantial compliance [with] such notice requirements by the mere fact that [the] adverse party filed an opposition to said motion, precisely to question its non-compliance [with] notice requirements, prescribed by Rule 15, Revised Rules of Court?"

'2.4. Notwithstanding the foregoing defects of said motion, is it proper for a Regional Trial Court to take cognizance thereof and act favorably thereon, without setting said motion for hearing?"

Citing RA 7691,[8] petitioners likewise assail the authority of the trial court to hear the cases against them.

For the sake of clarity, the discussion of the case will revolve around three points: first, the jurisdiction of regional trial courts over violations of the Election Code; second, the propriety of petitioners' suspension; and third, the

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alleged procedural lapses of the trial court.

The Court’s Ruling

We find no merit in the Petition.

First Issue:
Jurisdiction over Election Cases

Petitioners insist that the RTC did not have the jurisdiction to hear and decide the cases filed against them, because the penalty for the offenses charged did not exceed six years. Thus, they claim that the authority to hear the cases is vested by RA 7691 in the first-level courts.

The argument does not persuade. It is evident from Section 32, BP 129, as amended by Section 2 of RA 7691, that the jurisdiction of first-level courts -- the metropolitan trial courts, municipal trial courts and municipal circuit trial courts -- does not cover those criminal cases which by specific provision of law are cognizable by regional trial courts. Section 32 provides:

> "Sec. 32. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases. Except in cases falling within the exclusive original jurisdiction of the Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
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> (1) Exclusive original jurisdiction over all violations of city or municipal ordinances, committed within their respective territorial jurisdiction; and
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> (2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof; Provided, however, that in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.

Petitioners were charged with violating Section 261 (o) of the Omnibus Election Code. Under Section 268 of the said Code, regional trial courts have exclusive jurisdiction to try and decide any criminal action or proceeding for violation of the Code, "except those relating to the offense of failure to register or failure to vote." The said provision reads:

> "Sec. 268. Jurisdiction of courts. The regional trial court shall have the exclusive jurisdiction to try and decide any criminal action or proceeding for violation of this Code, except those relating to the offense of failure to register or failure to vote, which shall be under the jurisdiction of the metropolitan or municipal trial courts. From the decision of the courts, appeal will lie as in other criminal cases."

Worth noting also is this Court’s disquisition in COMELEC v. Noynay:[9]

> "We have explicitly ruled in Morales v. Court of Appeals, that by virtue of the exception provided for in the opening sentence of Section 32, the exclusive original jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts does not cover criminal cases which by specific provisions of law fall within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, regardless of the penalty prescribed therefor. Otherwise stated, even if those excepted cases are punishable by imprisonment not exceeding six (6) years, (i.e., prision correccional, arresto mayor, or arresto menor) jurisdiction thereon is retained by the Regional Trial Courts or the Sandiganbayan, as the case may be.
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> "Among the examples cited in Morales as falling within the exception provided for in the opening sentence of Section 32 are cases under (1) Section 20 of BP Blg. 129; (2) Article 360 of the Revised Penal Code as

> amended; (3) the Decree on Intellectual Property; and (4) the Dangerous Drugs Act of 1972, as amended.
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> "Undoubtedly, pursuant to Section 268 of the Omnibus Election Code, election offenses also fall within the exception.
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> "As we stated in Morales, jurisdiction is conferred by the Constitution or Congress. Outside the cases enumerated in Section 5(2) of Article VIII of the Constitution, Congress has the plenary power to define, prescribe, and apportion the jurisdiction of various courts. Congress may thus provide by law that a certain class of cases should be exclusively heard and determined by one court. Such law would be a special law and must be construed as an exception to the general law on jurisdiction of courts, namely, the Judiciary Act of 1948, as amended, and the Judiciary Reorganization Act of 1980. R.A. 7691 can by no means be considered as a special law on jurisdiction; it is merely an amendatory law intended to amend specific sections of the Judiciary Reorganization Act of 1980. Hence, R.A. No. 7691 does not have the effect of repealing laws vesting upon Regional Trial Courts or the Sandiganbayan exclusive original jurisdiction to hear and decide the cases therein specified. That Congress never intended that RA 7691 should repeal such special provisions is indubitably evident from the fact that it did not touch at all the opening sentence of Section 32 of B.P. Blg. 129 providing for the exception." (Itals supplied)

Clearly then, regional trial courts have jurisdiction to hear and decide cases for violation of the Omnibus Election Code, such as those filed against petitioners.

Second Issue:
Preventive Suspension

Petitioners contend that their cases are not subject to Section 13 of RA 3019, the Anti-Graft and Corrupt Practices Act, which mandates the preventive suspension of indicted public officials. We disagree.

Petitioners were accused of using barangay property for election campaign purposes and other partisan political activities during their incumbency as barangay officials, in violation of Section 261 (o) of the Omnibus Election Code, which reads as follows:

> "Section 261. Prohibited Acts. The following shall be guilty of an election offense:
>
> (o) Use of public funds, money deposited in trust, equipment, facilities owned or controlled by the government for an election campaign. - Any person who uses under any guise whatsoever, directly or indirectly, (1) public funds or money deposited with or held in trust by, public financing institutions or by government offices, banks, or agencies; (2) any printing press, radio, or television station or audio-visual equipment operated by the Government or by its divisions, sub-divisions, agencies or instrumentalities, including government-owned or controlled corporations, or by the Armed Forces of the Philippines; or (3) any equipment, vehicle, facility, apparatus or paraphernalia owned by the government or by its political subdivisions, agencies, including government-owned or controlled corporations, or by the Armed Forces of the Philippines for any election campaign or for any partisan political activity."

On the other hand, Section 13, R.A. 3019, as amended, provides:

> "SEC. 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.

> "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 restitute the same to the government."

Interestingly, prior to its amendment by BP 195,[10] the said provision had applied to public officers who, under a valid information, were charged with violations of RA 3019 or with offenses covered by the Revised Penal Code provision on bribery.[11] The amendatory law expanded the scope of the provision; now, public officers may likewise be suspended from office if, under a valid information, they are charged with an offense falling under Title 7 of Book II of the Revised Penal Code, or with any other form of fraud involving government funds or property.

True, the cases against petitioners involve violations of the Election Code; however, the charges are not unidimensional. Every law must be read together with the provisions of any other complementing law, unless both are otherwise irreconcilable. It must be emphasized that petitioners were incumbent public officers charged with the unauthorized and unlawful use of government property in their custody, in the pursuit of personal interests. The crime being imputed to them is akin to that committed by public officers as laid down in the Revised Penal Code. Certainly, petitioners' acts constitute fraud against the government; thus, the present case is covered by Section 13 of RA 3019.

The aforementioned proviso reinforces the principle that a public office is a public trust. Its purpose is to prevent the accused public officer from hampering his prosecution by intimidating or influencing witnesses, tampering with documentary evidence, or committing further acts of malfeasance while in office.[12] Preventive suspension is not a penalty;[13] petitioners, whose culpability remains to be proven, are still entitled to the constitutional presumption of innocence.

Third Issue:
Allegations of Procedural Prejudice

Petitioners assail the trial court's Order of suspension on the ground that it was issued pursuant to the initial "Motion for Removal From Office,"[14] received by the trial court on December 6, 1996. The records show that this Motion neither complied with the notice requirements provided under the Rules of Court, nor was it filed by one who was a party to their cases.

The Court has held time and again that a motion that does not meet the notice requirements of Sections 4 and 5 of Rule 15 of the Rules of Court[15] is pro forma, and that the trial court has no authority to act on it. The requisites laid down in the aforementioned provisions are categorical and mandatory, and the failure of the movants to comply with them renders their Motions fatally defective.[16]

The Rules mandate the service of a copy of a motion containing a notice of time and place of hearing, in order to afford the adverse party time to study and answer the arguments in the said motion before its resolution by the court.

Considering the circumstances of the present Petition, however, we believe that the requirements of procedural due process were substantially complied with, and that such compliance justifies a liberal interpretation of the above-mentioned rules.

In his "Manifestation on Comment of the Accused," the COMELEC prosecutor adopted the assailed Motion as well as the February 28, 1997 "Supplement to Motion for Removal from Office." This action should be considered to have thus cured the procedural defect pointed out by petitioners. More important, however, is the fact that the trial court heard petitioners and considered their arguments. In their six-page Memorandum[17] filed pursuant to the directive of the trial court, petitioners were able to ventilate their arguments against the Motion for

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Removal from Office. They contended that neither RA 3019 nor Section 60 of the Local Government Code justified their suspension from office. Indeed, the purpose of a notice of hearing was served;[18] the pleadings that were filed for and against them negated their allegations of procedural prejudice.

Under Section 13 of RA 3019, the suspension of a public officer is mandatory after the determination of the validity of the information, as enunciated in Socrates v. Sandiganbayan[19] which we quote:

> "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 is 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."

In the case at bar, while there was no pre-suspension hearing held to determine the validity of the Informations that had been filed against petitioners, we believe that the numerous pleadings filed for and against them have achieved the goal of this procedure. The right to due process is satisfied not just by an oral hearing but by the filing and the consideration by the court of the parties' pleadings, memoranda and other position papers.

WHEREFORE, the petition is hereby DENIED and the assailed Decision of the Court of Appeals AFFIRMED. Costs against petitioners.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima and Gonzaga-Reyes, JJ., concur.

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[1] Rollo, pp. 52-55.

[2] Special Ninth Division composed of J. Artemon D. Luna, Division chairman and ponente; and JJ. Bennie A. Adefuin de la Cruz and Demetrio G. Demetria, who both concurred.

[3] Entitled "Rogelio Juan, Pedro de Jesus, Delfin Carreon and Antonio Galguerra v. Hon. Lucas P. Bersamin, in his capacity as Presiding Judge, Regional Trial Court of Quezon City, Branch 96, and People of the Philippines."

[4] Penned by Judge Lucas P. Bersamin.

[5] Rollo, pp. 52-53.

[6] Rollo, p. 54.

[7] The case was deemed submitted for decision on June 9, 1999, upon receipt by this Court of respondent's Memorandum, which was signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Fernanda Lampas Peralta and Asst. Sol. Marilou B. Dayao. Petitioners' Memorandum, submitted by Atty. Cenon C. Sorreta, was received by the Court on February 11, 1999.

[8] Petition, pp. 28-43; rollo, pp. 30-45.

[9] 292 SCRA 254, July 9, 1998, per Davide, J. (Now CJ)

[10] "AN ACT AMENDING SECTION EIGHT, NINE, TEN, ELEVEN, AND THIRTEEN OF REPUBLIC ACT NUMBERED THIRTY HUNDRED AND NINETEEN, OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT."

[11] Before its amendment, Section 13 of R.A. 3019 read as follows: "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."

[12] Pimentel v. Garchitorena, 208 SCRA 122, April 14, 1992.

[13] Socrates v. Sandiganbayan, 253 SCRA 773, February 20, 1996; Bunye v. Escareal, 226 SCRA 332, September 10, 1993; Gonzaga v. Sandiganbayan, 201 SCRA 417, September 6, 1991.

[14] Rollo, pp. 64-65.

[15] Section 4. Hearing of motion. Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of hearing shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good reason sets the hearing on shorter notice.

Section 5. Notice of hearing. The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[16] People v. Court of Appeals et al., GR No. 126005, January 21, 1999; Tan v. Court of Appeals and Bloomberry Export Manufacturing, Inc., 295 SCRA 755, September 22, 1998; Goldloop Properties, Inc., v. Court of Appeals, 212 SCRA 498, August 11, 1992.

[17] Rollo, pp. 82-87.

[18] See Vlasons Enterprises Corporation v. Court of Appeals, GR Nos. 121662-64, July 6, 1999.

[19] 253 SCRA 773, February 20, 1996, per Regalado, J.

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