

REYNALDO R. BAYOT, PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 61776 to No. 61861. March 23, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioner Reynaldo R. Bayot is one of the several persons accused in more than one hundred (100) counts of Estafa thru Falsification of Public Documents before the Sandiganbayan. The said charges stemmed from his alleged involvement, as a government auditor of the Commission on Audit assigned to the Ministry of Education and Culture, together with some officers/employees of the said Ministry, the Bureau of Treasury and the Teachers' Camp in Baguio City, in the preparation and encashment of fictitious TCAA checks for non-existent obligations of the Teachers' Camp resulting in damage to the government of several million pesos. The first thirty-two (32) cases were filed on July 25, 1976.

In the meantime, petitioner ran for the post of municipal mayor of Amadeo, Cavite in the local elections held in January 1980. He was elected.

On May 30, 1980, the Sandiganbayan promulgated a decision convicting herein petitioner and some of his co-accused in all but one of the thirty-two (32) cases filed against them. Whereupon, appeals were taken to this Court and the cases are now pending review in G. R. Nos. L-54645-76.

However; on March 16, 1982, Batas Pambansa Blg. 195 was passed amending, among others, Section 13 of Republic Act No. 3019. The said section, as amended, reads -

"Sec. 13. Suspension of 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 and 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 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 had been filed against him."

Thereafter, in other cases pending before the respondent court in which herein petitioner is one of the accused, the prosecution filed a motion to suspend all the accused-public officers pendente lite from their respective offices or any other public office which they may be occupying pending trial of their cases.

On July 22, 1982, respondent court issued an order directing the suspension of all the accused including herein petitioner "from their public positions or from any other public office that they may be holding x x x " (p. 26, Rollo).

Herein petitioner filed a motion for reconsideration alleging that "to apply the provision of Batas Pambansa Blg. 195 to the herein accused would be violative of the constitutional guarantee of protection against an ex post facto

law" (p. 28, Rollo). The motion was denied by respondent court in a resolution dated September 6, 1982. Hence, this petition for certiorari.

It is the submission of petitioner that respondent court acted without jurisdiction or in excess of jurisdiction amounting to lack of jurisdiction or with grave abuse of discretion in suspending petitioner from office as Mayor of Amadeo, Cavite, pendente lite because -

1. Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended by Batas Pambansa Blg. 195, is a penal statute in which case the provision of said Act must be strictly construed in favor of the accused and against the State;
2. A close perusal of Batas Pambansa Blg. 195, as well as the proceedings therein of the Batas Pambansa is absent of the legislative intent to have said Batas Pambansa Blg. 195 applied retroactively;
3. In the supposition that Batas Pambansa Blg. 195 is to be applied retroactively, its application would violate the Constitutional provision against enactment of ex post facto law; and,
4. Petitioner cannot be suspended to the position of which he was duly elected by the people of Amadeo, Cavite, based on an act which has nothing to do with his present position.

We find no merit in petitioner's contention that Section 13 of Republic Act 3019, as amended by Batas Pambansa Blg. 195, which includes the crime of Estafa thru Falsification of Public Document as among the crimes subjecting the public officer charged therewith with suspension from office pending action in court, is a penal provision which violates the constitutional prohibition against the enactment of ex post facto law. Paragraph 3 of Article 24 of the Revised Penal Code clearly states that suspension from the employment or public office during the trial or in order to institute proceedings shall not be considered as penalty. It is not a penalty because 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. Those mentioned in paragraph Nos. 1, 3 and 4 of said Article 24 are merely preventive measures before final judgment. Not being a penal provision, therefore, the suspension from office, pending trial of the public officer charged with crimes mentioned in the amendatory provision committed before its effectivity does not violate the constitutional provision on ex post facto law. Further, the claim of petitioner that he cannot be suspended because he is presently occupying a position different from that under which he is charged is untenable. The amendatory provision clearly states that any incumbent public officer against whom any criminal prosecution under a valid information under Republic Act 3019 or for any offense involving fraud upon the 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. Thus, by the use of the word "office" the same applies to any office which the officer charged may be holding, and not only the particular office under which he was charged.

ACCORDINGLY, instant petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

Makasiar, Acting C.J., Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin and Gutierrez, Jr., JJ., concur.

Fernando, C.J. and Teehankee, J., on leave - abroad.

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