

SALVADOR P. SOCRATES, PETITIONER, VS. SANDIGANBAYAN, THIRD DIVISION, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. Nos. 116259-60. February 20, 1996*

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-116259-60/>**REGALADO, J.:**

Before us are two consolidated original actions for certiorari and prohibition filed by petitioner Salvador P. Socrates assailing the orders and resolution issued by respondent Sandiganbayan in Criminal Cases Nos. 18027 and 18028, both entitled "People of the Philippines vs. Salvador P. Socrates." In G.R. Nos. 116259-60, petitioner assails the legality of (a) the order dated February 9, 1994 denying petitioner's Amended and Consolidated Motion to Quash the Informations;^[1] (b) the order dated May 24, 1994 denying the Motion for Reconsideration and/or Reinvestigation;^[2] and (c) the order dated July 20, 1994 denying the Motion for Partial Reconsideration of the Order of May 24, 1994.^[3] On the other hand, in G.R. Nos. 118896-97 petitioner seeks the annulment of the Resolution dated December 23, 1994^[4] ordering the preventive suspension of petitioner as Provincial Governor of Palawan for a period of ninety (90) days, and to enjoin respondent court from enforcing the same.

The antecedent facts, as may be culled from the Comment filed by the Solicitor General in G.R. Nos. 116259-60, are as follows:

Petitioner who is the incumbent governor of Palawan, was first elected governor of the said province in 1968 and was again reelected in both the 1971 and 1980 elections, until he was replaced by private complainant Victoriano Rodriguez as Officer-In-Charge Governor after the EDSA Revolution in February 1986. Subsequently, both petitioner and Rodriguez ran for governor in the 1988 elections where the latter emerged victorious. In the 1992 synchronized national and local elections, the two again contested the gubernatorial post; and this time, it was petitioner who won.

Meanwhile, at the time Rodriguez was still the OIC Governor of the province, the Provincial Government of Palawan, as represented by Rodriguez and the Provincial Board Members of Palawan, filed before the Office of the Tanodbayan two (2) complaints both dated December 5, 1986 and docketed as TBP No. 86-01119. The first complaint charged petitioner with violation of Section 3(b) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and the second charged petitioner, together with several other provincial officers, with violation of Section 3(a) and (g) of the same law (Annexes "A" & "A-I", respectively, Petition).

Instead of filing a counter-affidavit as directed, petitioner filed a Motion to Suspend Preliminary investigation dated September 3, 1987 on the ground that upon the ratification of the 1987 Constitution, the present Tanodbayan has been transformed into the Office of the Special Prosecutor and has, therefore, lost his power to conduct preliminary investigation (Annex "C", *ibid*).

In a letter to the Honorable Tanodbayan dated June 23, 1988, however, Nelia Yap-Fernandez, the Deputized Tanodbayan Prosecutor from the Office of the City Prosecutor of Puerto Princesa City, requested that she be allowed to inhibit herself from handling the preliminary investigation of the present case considering that

petitioner appears to be her co-principal sponsor in a wedding ceremony held last May 28, 1988 (Annex "C-3", *ibid.*).

On January 16, 1989, the Office of the Ombudsman received a letter from Rodriguez, who was then the incumbent governor of the province, inquiring about the present status of TBP No. 86-01 119 (Annex "D", *ibid.*). In its 4th Indorsement dated February 7, 1989, the Ombudsman referred the matter of continuing and terminating the investigation of the present case to the newly deputized Tanodbayan Prosecutor, Sesinio Belen from the Office of the Provincial Prosecutor (Annex "D-1", *ibid.*). However, the latter, in his 5th Indorsement dated February 27, 1989 to the Ombudsman, requested that the present case be reassigned to another Prosecutor considering that he is a long time close friend and "compadre" of petitioner and that one of the complainants therein Eustaquio Gacott, Jr., who was formerly a member of the Sangguniang Panlalawigan, is now the Provincial Prosecutor of Palawan, his present superior (Annex "D-2", *ibid.*).

On April 25, 1989, petitioner was directed by the Ombudsman to comment on the letter-manifestation dated April 4, 1989 filed by Rodriguez requesting that an amendment be effected on certain portions of the present complaint (Annexes "E" & "E-2", *ibid.*). No comment having been received by the Ombudsman as of May 24, 1989, petitioner, on an even date, was again directed to comment thereon (Annex "E-1", *ibid.*). Finally, petitioner filed his required comment dated June 2, 1989 (Annex "E-3", *ibid.*).

Based on the Resolution dated August 27, 1992 of Special Prosecution Officer I Wendell Barreras-Sulit (Annex "F-2", *ibid.*), which affirmed the Resolution dated February 21, 1992 rendered by Ombudsman Investigator Ernesto Nocos recommending the filing of appropriate charges against petitioner, the Office of the Special Prosecutor filed on September 16, 1992 with the respondent Court two (2) Informations against petitioner, docketed as Criminal Cases Nos. 18027 and 18028. The first was for violation of Section 3(h) of Republic Act No. 3019, and the second for violation of Section 3(e) of the same law (Annexes "F" & "F-1", *ibid.*).

Before his arraignment could be set, petitioner initially filed an "Urgent Motion for Quashal of Information and/or Reinvestigation in the Light of Supervening Facts." However, when the said motion was subsequently called for hearing, petitioner's counsel was made to choose which of the aforesaid two (2) conflicting motions he preferred to take up with respondent Court. Thus, on January 18, 1993, petitioner filed an "Amended and Consolidated Motion to Quash the Information in the Above-entitled Cases." After an Opposition and a Reply were filed by the prosecution and petitioner, respectively, respondent court issued its first assailed Resolution on February 9, 1994, denying the same (Annex "G", *ibid.*).

On March 15, 1994, petitioner filed a Motion for Reconsideration and/or Reinvestigation, which was subsequently denied by respondent court in its second assailed Resolution issued on May 24, 1992 (Annex "H-1", *ibid.*).[5]

Petitioner then filed a petition for certiorari and prohibition, docketed as G.R. Nos. 116259-60, challenging the aforementioned orders of the Sandiganbayan for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. It was likewise prayed that respondent court be enjoined from taking cognizance of and from proceeding with the arraignment of petitioner and the trial and hearing of Criminal Cases Nos. 18027-28 pending before it. Respondents thereafter filed their Comment to which a Reply was submitted by petitioner.

In the meantime, no temporary restraining order having been issued by this Court in G.R. Nos. 116259-60, respondent court proceeded with the arraignment of herein petitioner on October 5, 1994 wherein a plea of not guilty was entered for him by the court after he refused to do so. Thereafter, with the denial of petitioner's motion to quash the informations, the prosecution filed on October 11, 1994 before respondent court a Motion to Suspend Accused Pendente Lite[6] pursuant to Section 13 of Republic Act No. 3019. Petitioner opposed said motion on

the ground that the validity of the informations filed against him is still pending review before the Supreme Court. He further contended therein that Section 13 of Republic Act No. 3019, on which the motion to suspend is based, is unconstitutional in that it constitutes an undue delegation of executive power and is arbitrary and discriminatory.

In view of the filing of the motion for his suspension, petitioner filed on October 14, 1994 in G.R. Nos. 116259-60 a Supplemental Petition^[7] questioning the veracity of and seeking to restrain respondent court from acting on said motion to suspend *pendente lite*, the hearing of which was scheduled on October 17, 1994. However, before respondents could file their comment thereto as required by this Court, petitioner, who initially sought the holding in abeyance of further action on his supplemental petition until after respondent court shall have resolved the motion to suspend *pendente lite*, eventually decided to withdraw the same purportedly in order not to delay the disposition of the main petition. Hence, on January 16, 1995, this Court issued a resolution^[8] granting the motion to withdraw the supplemental petition and considering the petition in G.R. Nos. 116259-60 as submitted for resolution.

In the interim, petitioner filed before respondent court on November 28, 1994 an amended motion to include as co-principals: (a) in Criminal Case No. 18028, the members of the Sangguniang Panlalawigan who authorized the purchase and repair of the vessel in question; and (b) in Criminal Case No. 18027, the Board of Directors of ERA Technology and Resources Corporation which entered into a contract with the Province of Palawan.^[9] Petitioner argued that the non-inclusion of these co-principals violates his right to due process and equal protection of the laws which thus rendered the informations null and void. It appears that the prosecution did not oppose nor object to this amended motion.

On December 23, 1994, respondent court, without ruling on petitioner's motion to include co-principals, issued its questioned resolution granting the motion to suspend *pendente lite* and ordering the suspension of petitioner as Provincial Governor of Palawan for a period of ninety (90) days from notice.

His motion for the reconsideration thereof having been denied, another petition for certiorari and prohibition with prayer for a restraining order was filed by petitioner on February 20, 1995 against the same respondents, docketed as G.R. Nos. 118896-97, and which seeks to annul as well as to enjoin respondent court from enforcing its resolution dated December 23, 1994 ordering his suspension *pendente lite*. On March 8, 1995, the Court resolved to consolidate this second petition with G.R. Nos. 116259-60.

From the mosaic of the foregoing events and the incidents interjected therein, the following pattern of contentious issues has emerged:

In G.R. Nos. 116259-60, the validity of the informations filed in Criminal Cases Nos. 18027-28 is being contested on three grounds, viz.: (1) the respondent court did not acquire jurisdiction over the case on the ground that an inordinate delay of six (6) years between the conduct of the preliminary investigation and the subsequent filing of the informations against petitioner constitutes a violation of his constitutional rights to a speedy disposition of the case and due process of law pursuant to the *Tatad* doctrine; (2) the facts charged do not constitute an offense; and (3) since the acts charged in the complaints filed before the Tanodbayan are different from the charges contained in the informations, another preliminary investigation should have been conducted, in the absence of which there is a denial of due process.

In G.R. Nos. 118896-97, petitioner questions the validity of the suspension order in that: (1) he may not be suspended while the issue on the validity of the informations filed against him is still pending review before the Supreme Court; and (2) Section 13 of Republic Act No. 3019, which forms the basis of the order of suspension, is unconstitutional on the ground that it constitutes an undue delegation of the authority to suspend which is

essentially an executive power. Petitioner contends that the jurisprudential doctrines relied upon by respondent court in upholding the constitutionality of Section 13 are not applicable to the cases at bar which involve an issue not yet passed upon by this Court. In addition, petitioner again attacks the legality of the subject informations for having been filed in violation of the due process and equal protection clauses by reason of the non-inclusion therein, as co-principals, of the members of the Sangguniang Panlalawigan who approved the purchase of the vessel, as well as the board of directors of ERA Technology and Resource Corporation which entered into a contract with the Province of Palawan.

I. G.R. Nos. 116259-60

1. In asserting that there was a violation of his right to a speedy trial by reason of the unreasonable delay of six (6) years between the conduct of the preliminary investigation and the filing of the informations, petitioner invokes the doctrine laid down in the leading case of *Tatad vs. Sandiganbayan, et al.*[10] In said case, all the affidavits and counter-affidavits had already been filed with the Tanodbayan for final disposition as of October 25, 1982 but it was only on June 12, 1985, or three (3) years thereafter, that the informations accusing Tatad of a violation of Republic Act No. 3019 were filed before the Sandiganbayan. The Court held there that an inordinate delay of three (3) years in the conduct and termination of the preliminary investigation is violative of the constitutional rights of the accused to due process and speedy disposition of his case, by reason of which the informations filed against the accused therein were ordered dismissed. It must be emphasized, however, that in the *Tatad* case, no explanation or ratiocination was advanced by the prosecution therein as to the cause of the delay.

In the present case, as distinguished from the factual milieu obtaining in *Tatad*, respondent court found that the six-year delay in the termination of the preliminary investigation was caused by petitioner's own acts. Thus:

In the cases at bar, the record shows that delay in the filing of the Informations in these cases was caused, not by inaction of the prosecution, but by the following actuations of the accused:

(1) Sometime after the complaint of private complainant was filed with the Office of the City Fiscal of the City of Puerto Princesa, preliminary investigation was held in abeyance on account of the motion of accused Salvador P. Socrates, entitled "Motion to Suspend Preliminary Investigation." Suspension was prayed for until an Ombudsman, as provided in Executive Order No. 243, shall have been appointed;

(2) Preliminary investigation was interrupted when private complainant, then Governor Victoriano J. Rodriguez, filed on April 24, 1989, a letter-manifestation correcting the complaint;

(3) Only on September 22, 1989 did the accused in these cases file with the Office of the Ombudsman a reply to complainant's manifestation;

(4) In view of the foregoing actuations of the parties, preliminary investigation of these cases was started in earnest only on June 25, 1990. Respondents then, including the accused herein, were required to submit counter-affidavits;

(5) Interrupting preliminary proceedings again, accused Governor Salvador P. Socrates, on August 13, 1990, filed a motion to dismiss the complaint upon the following grounds:

(a) That the Honorable Ombudsman has no jurisdiction over the person of respondent; and

(b) That the complaint does not conform substantially to the prescribed form.

The private complainant was, as a matter of right, granted a period of time within which to oppose the motion. The prosecution necessarily had to ponder on the motion after protracted deliberations;

(6) On April 1, 1991, counsel for the accused filed an "Appearance and Motion for Extension of Time to File

Appropriate Pleading." Counsel prayed that "respondents be granted an extension of twenty (20) days within which to comply with the order of March 11, 1991";

(7) The accused Governor Salvador P. Socrates, through counsel, filed a motion to quash/dismiss on December 17, 1991. This pleading was received by the Office of the Deputy Ombudsman only on January 13, 1992. It took some time for the prosecution to resolve the motion and there never was any intimation on the part of the accused that the accused was invoking his right to a speedy disposition of the complaint against him. The motion to quash/dismiss was in fact denied by the prosecution in an order dated January 20, 1990;

(8) A motion for reconsideration having been filed thereafter, the Informations in these cases were after all filed on September 16, 1992, but only after the ruling of the prosecution on the motion to quash/dismiss.[11]

Petitioner, in a futile attempt to refute the foregoing factual findings of respondent court, could only raise the defense that the motion to suspend the preliminary investigation did not affect the proceedings therein; that the preliminary investigation really started on February 18, 1987 when the Tanodbayan issued subpoenas to the respondents; that the motion to dismiss/quash the complaints was purposely for the early termination of the preliminary investigation; that the filing of the complaint was politically motivated, as may be gleaned from the affidavit of complainant Rodriguez; and that pursuant to Section 3, Rule 112 of the Rules of Court, the case should have been resolved within ten (10) days from the time the investigation was concluded.

Clearly, the facts of the case at bar are diametrically opposed to the factual situation in Tatad because the obviously delaying tactics resorted to by herein petitioner were not present in the latter case. Furthermore, the allegation that the filing of the complaint was politically motivated does not serve to justify the nullification of the informations where the existence of such motive has not been sufficiently established nor substantial evidence presented in support thereof. The situation in Tatad was quite to the contrary since the accused therein successfully proved that the charges were filed against him only after it became widely known that he actually had a falling out with the late President Marcos.

That scenario impelled the Court to make the admonition therein that "prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends or other purposes alien to, or subversive of, the basic and fundamental objective of serving the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty." Such an exigency apparently does not obtain in the case at bar. There is nothing in the records from which it can be conclusively inferred, expressly or impliedly, that the investigating prosecutors were politically motivated or even coerced into filing these criminal charges against petitioner.

We likewise do not adhere to petitioner's asseveration that the orders issued by Branches 51 and 52 of the Regional Trial Court of Puerto Princesa City quashing the informations for technical malversation filed against herein petitioner, on the ground that the inordinate delay in the termination of the preliminary investigation constitutes a violation of petitioner's right to due process and speedy disposition of his case which thereby ousted said courts of jurisdiction thereover, have become final and conclusive by reason of the prosecution's failure to file an appeal therefrom. We have carefully scrutinized the orders adverted to and we find and so hold that the same cannot effectively deter the prosecution herein from proceeding with the trial before the Sandiganbayan.

First, the criminal cases for technical malversation filed before said Regional Trial Court are different from the charges for violation of Republic Act No. 3019 filed with the Sandiganbayan. The former is covered by a general law while the latter involves a special law, with variant elements of the offenses being required, hence double jeopardy cannot set in. Second, and more importantly, it will be noted that the trial court in the malversation case hastily concluded that there was an inordinate delay of six (6) years in the termination of the preliminary investigation through the mere expedient of counting the number of years that had elapsed from the institution of

the complaint with the Ombudsman until the filing of the informations in court, without bothering to inquire into the pertinent factual considerations and procedural technicalities involved.

In arriving at such a self-serving conclusion, the trial court confined itself strictly to a mathematical reckoning of the time involved, instead of undertaking a more substantive appreciation of the circumstances and particulars which could have possibly caused the delay. On the contrary, herein respondent court has convincingly shown that the preliminary investigation dragged on for several years owing, ironically, to petitioner's evident propensity to resort to dilatory tactics. In the cases now before us, it cannot be successfully and validly contended that petitioner's right to speedy trial has been violated.

We have only to reiterate the declaration made in *Tatad* to the effect that in the application of the constitutional guaranty of the right to speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case. It is palpably clear that the application of the *Tatad* doctrine should not be made to rely solely on the length of time that has passed but equal concern should likewise be accorded to the factual ambiance and considerations. It can easily be deduced from a complete reading of the adjudicatory discourse in *Tatad* that the three-year delay was specifically considered vis-à-vis all the facts and circumstances which obtained therein. Perforce, even on this ground alone, the instant petition for certiorari should be dismissed.

A speedy trial is one conducted according to the law of criminal procedure and the rules and regulations, free from vexatious, capricious and oppressive delays. The primordial purpose of this constitutional right is to prevent the oppression of an accused by delaying criminal prosecution for an indefinite period of time.[12] In the cases at bar, while there may have been some delay, it was petitioner himself who brought about the situation of which he now complains.

2. Petitioner then questions the sufficiency of the allegations in the informations in that the same do not constitute an offense supposedly because (a) in Criminal Case No. 18027, there is no statement that herein petitioner actually intervened and participated, as a board member of ERA Technology and Resources Corporation, in the latter's contract with the Province of Palawan, which is allegedly an element necessary to constitute a violation of Section 3(h) of Republic Act No. 3019; and (b) in Criminal Case No. 18028, the information failed to show a causal relation between the act done by the accused and the undue injury caused to the provincial government of Palawan.

With respect to the alleged defects in the information filed in Criminal Case No. 18027 for violation of Section 3(h) of the anti-graft law, petitioner invokes the ruling in the case of *Trieste, Sr. vs. Sandiganbayan*[13] where it was held that "what is contemplated in Section 3(h) of the anti-graft law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may attach." In the cited case, however, the Court found that the petitioner therein did not, in any way, intervene in making the awards and payment of the purchases in question since he signed the voucher only after all the purchases had already been made, delivered and paid for by the municipal treasurer.

The purchases involved therein were previously ordered by the municipal treasurer without the knowledge and consent of the accused municipal mayor, were subsequently delivered by the supplier, and were thereafter paid by the treasurer again without the knowledge and consent of the mayor. The only participation of the accused mayor in the transaction involved the mechanical act of signing the disbursement vouchers for record purposes only. Thus, the Court did not consider the act therein of the accused mayor to be covered by the prohibition under Section 3(h) of the law.

Contrariwise, in the present cases, petitioner Socrates stands charged with a violation of Section 3(h) for intervening in his official capacity as Governor of Palawan in reviewing and approving the disbursement voucher

dated August 2, 1982 for payment in favor of ERA Technology Resources Corporation where he was one of the incorporators and members of the board of directors. Such allegation clearly indicates the nature and extent of petitioner's participation in the questioned transaction. Without petitioner's approval, payment could not possibly have been effected.

We likewise do not find any flaw in the information filed in Criminal Case No. 18028, for violation of Section 3(e), which would warrant the dismissal thereof. Evidentiary facts need not be alleged in the information because these are matters of defense. Informations need only state the ultimate facts; the reasons therefor could be proved during the trial.[14] Hence, there is no need to state facts in the information which would prove the causal relation between the act done by the accused and the undue injury caused to the Province of Palawan. Antipodal to petitioner's contention, a reading of the information in Criminal Case No. 18028 will readily disclose that the essential elements of the offense charged have been sufficiently alleged therein. It is not proper, therefore, to resolve the charges right at the outset without the benefit of a full-blown trial. The issues require a fuller ventilation and examination. Given all the circumstances of this case, we feel it would be unwarranted to cut off the prosecutory process at this stage of the proceedings and to dismiss the information.[15]

3. It is likewise asserted by petitioner that the elements of the offenses charged in the complaints are different from those stated in the informations which were filed before the Sandiganbayan, and that since there was no preliminary investigation conducted with respect to the latter, such informations should be declared null and void for lack of due process.

The first complaint for violation of Section 3(b) became the basis for the filing of an information in Criminal Case No. 18027 for a violation of Section 3(h). In both, petitioner is accused of intervening in his official capacity as Provincial Governor in the contracts for the installation and construction of waterwork projects, with the ERA Technology and Resources Corporation, where he was an incorporator and a member of the board of directors, thereby directly or indirectly benefiting from said transactions. In Criminal Case No. 18028, petitioner was charged with a violation of Section 3(e) as a result of the complaint filed against him and several others for a violation of Section 3(a) and (g). In both instances, petitioner is charged with the disbursement of public funds for the purchase of a motor launch which was grossly and manifestly disadvantageous to the provincial government of Palawan because the same broke down only after its maiden voyage.

It is thus clearly apparent that the complaints and the informations are based on substantially the same factual settings, except that the respective designations are different. Axiomatic is the rule that what controls is not the designation of the offense but its description in the complaint or information.[16] The real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information. It is not the technical name given by the fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the information.[17]

This Court has repeatedly held that when the facts, acts and circumstances are set forth in the body of an information with sufficient certainty to constitute an offense and to apprise the defendant of the nature of the charge against him, a misnomer or innocuous designation of a crime in the caption or other parts of the information will not vitiate it. In such a case, the facts set forth in the charge controls the erroneous designation of the offense and the accused stands indicted for the offense charged in the statement of facts. The erroneous designation may be disregarded as surplusage.[18]

Furthermore, it will be observed that it is the same section of the law which is involved in the present case, that is, Section 3 of Republic Act No. 3019, albeit it defines several modes of committing the same offense. It is an old

and well-settled rule in the appreciation of indictments that where an offense may be committed in any of several different modes, and the offense, in any particular instance, is alleged to have been committed in two or more of the modes specified, it is sufficient to prove the offense committed through any one of them, provided that it be such as to constitute the substantive offense. Thereafter, a judgment of conviction must be sustained if it appears from the evidence in the record that the accused was guilty as charged of any one of these modes of the offense.[19]

Neither will the absence of a preliminary investigation, assuming that it is necessary to conduct a new one, affect the validity of the informations filed against petitioner. It has been consistently held that the absence of a preliminary investigation does not impair the validity of the criminal information or render it defective. Dismissal of the case is not the remedy.[20] It is not a ground for the quashal of a complaint or information. The proper course of action that should be taken is for the Sandiganbayan to hold in abeyance the proceedings upon such information and to remand the case to the office of the Ombudsman for him or the Special Prosecutor to conduct a preliminary investigation,[21] if the accused actually makes out a case justifying such relief.

On the bases of the foregoing disquisitions, therefore, we rule and so hold that the informations filed against petitioner are valid and legal.

II. G.R. Nos. 118896-97

The main issue submitted herein for resolution is the legality of the petitioner's preventive suspension, which is premised on several grounds.

1. Initially, petitioner claims that the Sandiganbayan committed a grave abuse of discretion in ordering his suspension despite the fact that the validity of the informations filed against him is still pending review before the Supreme Court. In support thereof, he invokes the rule laid down in *Eternal Gardens Memorial Park Corporation vs. Court of Appeals, et al.*[22] that even if no temporary restraining order was issued by the Supreme Court, the Court of Appeals could have refrained from taking any action while the petition for certiorari was pending with the Supreme Court. Petitioner insists that this is what respondent court should have done. Under this particular issue, petitioner is in effect seeking a review of the order issued by the Sandiganbayan, dated February 9, 1994, denying his amended and consolidated motion to quash the information.

We have but to reiterate the fundamental rule that an order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial.[23] In other words, it cannot be the subject of appeal until the judgment or a final order is rendered. The ordinary procedure to be followed in that event is to enter a plea, go to trial and if the decision is adverse, reiterate the issue on appeal from the final judgment.[24] Although the special civil action for certiorari may be availed of in case there is a grave abuse of discretion or lack of jurisdiction, that vitiating error is not attendant in the present case.

Section 13 of Republic Act No. 3019 provides that:

"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 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."[25]

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.[26]

In the leading case of *Luciano, et al. vs. Mariano, et al.*[27] we have set out the guidelines to be followed by the lower courts in the exercise of the power of suspension under Section 13 of the law, to wit:

(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 No. 3019 or under the provisions of the Revised Penal Code on bribery, pursuant to Section 13 of said Act, 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 or suspension should it uphold the validity of the information or withhold 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.

With the aforequoted jurisprudential authority as the basis, it is evident that upon a proper determination of the validity of the information, it becomes mandatory for the court to immediately issue the suspension order. The rule on the matter is specific and categorical. It leaves no room for interpretation. It is not within the court's discretion to hold in abeyance the suspension of the accused officer on the pretext that the order denying the motion to quash is pending review before the appellate courts. Its discretion lies only during the pre-suspension hearing where it is required to ascertain whether or not (1) the accused had been afforded due preliminary investigation prior to the filing of the information against him, (2) the acts for which he was charged constitute a violation of the provisions of Republic Act No. 3019 or of the provisions of Title 7, Book II of the Revised Penal Code, or (3) the informations against him can be quashed, under any of the grounds provided in Section 2, Rule 117 of the Rules of Court. [28]

Once the information is found to be sufficient in form and substance, then the court must issue the order of suspension as a matter of course. There are no ifs and 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. In view of this latter provision, the accused elective public officer does not stand to be prejudiced by the immediate enforcement of the suspension order in the event that the information is subsequently declared null and void on appeal and the case dismissed as against him. 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.[29]

To further emphasize the ministerial duty of the court under Section 13 of Republic Act No. 3019, it is said that the court trying a case has neither discretion nor duty to determine whether or not a preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue 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.[30]

Applying now the procedure outlined in Luciano, the records of the instant case do not show that the proceedings leading to the filing of the informations against petitioner were tainted with any irregularity so as to invalidate the same. Likewise, the informations show that the allegations contained therein meet the essential elements of the offense as defined by the substantive law. The record is also bereft of undisputed facts to warrant the quashal of the informations under any of the grounds provided in Section 2, Rule 117 of the Rules of Court.[31] Finally, a cursory reading of the order dated February 9, 1994 issued by respondent court will show that petitioner was given the opportunity to be heard on his motion to quash. Veritably, the Sandiganbayan did not commit a grave abuse of discretion in denying the motion to quash and ordering the preventive suspension of herein petitioner.

2. Additionally, petitioner avers that the informations filed against him on which the order of suspension was based, are null and void in view of the non-inclusion of his co-principals which thus constitutes a violation of petitioner's right to due process and equal protection of the law and, therefore, ousted respondent court of its jurisdiction over the case. Petitioner alleges that in Criminal Case No. 18027, the board of directors of ERA Technology Corporation should have been included as principals by indispensable cooperation because without them he could not possibly have committed the offense.

Also, he claims that in Criminal Case No. 18028, the members of the Sangguniang Panlalawigan who issued the resolutions authorizing the purchase and repair of the motor launch should likewise have been included as principals by inducement or indispensable cooperation, considering that petitioner was allegedly merely implementing their resolutions. Hence, according to him, since the informations are null and void, the suspension order which is based thereon should necessarily also be declared null and void. We find no merit in petitioner's arguments.

First, the rule under Section 1, Rule 110 of the Rules of Court, as reformulated in Section 2, Rule 110 of the 1985 Rules on Criminal Procedure, is that all criminal actions must be commenced either by complaint or information in the name of the People of the Philippines "against all persons who appear to be responsible for the offense involved." The law makes it a legal duty for prosecuting officers to file the charges against whomsoever the evidence may show to be responsible for an offense. This does not mean, however, that they shall have no discretion at all; their discretion lies in determining whether the evidence submitted justify a reasonable belief that a person has committed an offense. What the rule demands is that all persons who appear responsible shall be charged in the information, which conversely implies that those against whom no sufficient evidence of guilt exists are not required to be included.[32]

This notwithstanding, it has equally been ruled that the failure of the fiscal to include the other public officials who appear to be responsible for the offense charged as co-accused in the information filed against the accused does not in any way vitiate the validity of the information under the Rules.[33]

Second, a failure to include other persons who appear to be responsible for the crime charged is not one of the grounds provided under Section 3, Rule 117 for which a motion to quash the information against the accused may be filed, most especially in the case at bar where there is prima facie proof that petitioner is probably guilty of the offense charged, aside from the fact that there is no allegation of conspiracy in the informations. Besides, such an infirmity would neither have the effect of extinguishing or mitigating petitioner's liability if he is subsequently found guilty of the offense charged. No one would contend that if for lack of knowledge of the facts, by mistake or for any other reason the prosecuting officer fails to include the names of one or more persons in an information filed by him, who were in fact guilty participants in the commission of the crime charged therein, such persons will be relieved of criminal liability; or that those accused who have been charged with the offense, brought to trial, and found guilty will be permitted to escape punishment merely because it develops in the course of the trial, or after the trial, that there were other guilty participants in the crime.[34]

Granting arguendo that this plea of petitioner may be invoked as a ground for the quashal of the informations, the motion to quash must still be denied for having been filed only after petitioner had been arraigned. Section 8, Rule 117 of the 1985 Rules on Criminal Procedure provides that "(t)he failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy." The failure to include a co-accused is not covered by the exception; hence, the same is deemed waived.

Third, where the government prosecutor unreasonably refuses to file an information or to include a person as an accused therein despite the fact that the evidence clearly warrants such action, the offended party has the following remedies: (1) in case of grave abuse of discretion, he may file an action for mandamus to compel the prosecutor to file such information; (2) he may lodge a new complaint against the offenders before the Ombudsman and have a new examination conducted as required by law; (3) he may institute administrative charges against the erring prosecutor, or a criminal complaint under Article 208 of the Revised Penal Code, or a civil action for damages under Article 27 of the Civil Code; (4) he may secure the appointment of another prosecutor; or (5) he may institute another criminal action if no double jeopardy is involved.

Fourth, it is significant and demonstrative of petitioner's strategy that from the inception of the criminal complaint before the Ombudsman and during the conduct of the preliminary investigation, until the filing of the informations before the Sandiganbayan and up to the denial of his amended and consolidated motion to quash, herein petitioner has not been heard to complain about the alleged non-inclusion of the other supposed offenders. Indeed, it is now much too late for petitioner to invoke and exploit this particular unfounded issue.

Prescinding from the averments raised in the complaint and information, from the facts and evidence of record, we do not deem it necessary to include the members of the Sangguniang Panlalawigan of Palawan and the board members of the ERA Technology and Resources Corporation as co-accused in the informations filed against herein petitioner. Insofar as the board members of said corporation are concerned, they may be prosecuted only under Section 4(b) of Republic Act No. 3019 which provides that "(i)t shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 thereof." In the information filed in Criminal Case No. 18027, petitioner stands charged with a violation of Section 3(h). It does not contain any allegation to the effect that the board members knowingly induced or caused herein petitioner to

commit the offense defined therein, which is an essential element of the crime in Section 4(b). Indubitably, therefore, the board members cannot be included as co-principals in Criminal Case No. 18027.

On the other hand, the members of the Sangguniang Panlalawigan cannot likewise be included in the information for violation of Section 3(e) filed in Criminal Case No. 18028, for the simple reason that it is not the validity of their resolution which is in issue here. While it is true that said sanggunian passed a resolution authorizing the allocation of funds for the purchase of a motor launch, and that petitioner merely acted on the strength thereof, it is not the fact of such authorization which is the subject of the charges against petitioner but rather the manner by which that resolution was implemented by the latter. There is nothing in the averments in the information from which it could be inferentially deduced that the members of the sanggunian participated, directly or indirectly, in the purchase of the vessel, and which fact could be the basis for their indictment.

3. Lastly, petitioner questions the legality of his suspension on the ground that Section 13 of Republic Act No. 3019, which is the basis thereof, is unconstitutional for being an undue delegation of executive power to the Sandiganbayan. He postulates that the power of suspension, which is an incident of the power of removal, is basically administrative and executive in nature. He further submits that the power of removal vested in the court under Section 9 of Republic Act No. 3019 is an incident of conviction, that is, it can only be exercised after a conviction has been handed down. Hence, according to petitioner, since the power to suspend is merely incidental to the power of removal, the former can only be exercised as an incident to conviction. Also, considering that Section 13 authorizes the court to exercise the power of suspension even prior to conviction of the accused, it cannot be considered as an exercise of judicial power because it is not within the ambit of the court's power of removal. In addition, petitioner avers that Section 13 is arbitrary and discriminatory because it serves no purpose at all, in that it does not require a proceeding to determine if there is sufficient ground to suspend, except for the fact that it is required by law.

Although presented differently, the issue on the court's power of suspension under Section 13 has been squarely and directly raised and adjudicated in the case of *Luciano vs. Provincial Governor, et al.*,^[35] the pronouncements wherein we quote in extenso:

3. Proceeding from our holding that suspension is not automatic, who should exercise the mandatory act of suspension under Section 13 of the Anti-Graft and Corrupt Practices Act?

Three theories have been advanced. One is that the power of suspension - where a criminal case has already been filed in court - still is with the Provincial Governor, relying on Section 2188 of the Revised Administrative Code. Another is that, following the ruling in *Sarcos vs. Castillo x x x*, because the main respondents are elective municipal officials, that power of suspension must be held to repose in the Provincial Board, under Section 5 of the Decentralization Act of 1967 (Republic Act 5185). The third is that, by Section 13 of the Anti-Graft and Corrupt Practices Act, solely the court in which the criminal case has been filed shall wield the power of suspension.

We opt for the third. Common sense and the scheme of the law so dictate.

It is true that nothing in Section 13 of the Anti-Graft and Corrupt Practices Act grants with specificity upon the Court of First Instance the power to suspend an official charged with a violation thereof. It would seem to us though that suspensions by virtue of criminal proceedings are separate and distinct from suspensions in administrative cases. An accurate reading of Section 13 yields two methods of investigation, one separate from the other: one criminal before the courts of justice, and the other administrative. This is the plain import of the last sentence of Section 13, which says that if acquitted, defendant in an Anti-Graft and Corrupt Practices case "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." Our interpretation but

preserves, as it should, the substantial symmetry between the first part of Section 13 and the last part thereof just quoted.

And so, there is in this legal provision a recognition that once a case is filed in court, all other acts connected with the discharge of court functions - which here include suspension - should be left to the Court of First Instance.

Not that this view finds no statutory support. By Section 9 of the Anti-Graft and Corrupt Practices Act, the court is empowered to punish any public official committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of the law, amongst others, to "perpetual disqualification from public office." Here, the Makati elective officials heretofore named have been charged with and found guilty of a violation of Section 3(g) of the Anti-Graft and Corrupt Practices Act and were sentenced by the court below, amongst others to be "perpetually disqualified to hold office." Article 30 of the Revised Penal Code declares that the penalty of perpetual absolute disqualification entails "(t)he deprivation of the public offices and employments which the offender may have held, even if conferred by popular election." No stretch of the imagination is necessary to show that perpetual absolute disqualification - which, in effect, is encompassed in the punishment set forth in Section 9 of the Anti-Graft and Corrupt Practices Act - covers that of removal from the office which each of the respondent municipal official holds.

Since removal from office then is within the power of the court, no amount of judicial legerdemain would deprive the court of the power to suspend. Reason for this is that suspension necessarily is included in the greater power of removal. It is without doubt that Congress has power to authorize courts to suspend public officers pending court proceedings for removal and that the congressional grant is not violative of the separation of powers. For, our Constitution being silent, we are not to say that from Congress is withheld the power to decide the mode or procedure of suspension and removal of public officers.

A look into the legislative intent, along with the legislative scheme, convinces us the more that the power of suspension should be lodged with the court. While the law may not be a model of precise verbal structure, the intent is there. Section 13 requires as a pre-condition of the power to suspend that there be a valid information. Validity of information, of course, is determined by the Court of First Instance where the criminal case is pending. That is essentially a judicial function. Suspension is a sequel to that finding, an incident to the criminal proceedings before the court. Indeed, who can suspend except one who knows the facts upon which suspension is based? We draw support from *Lacson vs. Roque*, supra, at page 469: "We are certain that no authority or good reason can be found in support of a proposition that the Chief Executive can suspend an officer facing criminal charges for the sole purpose of aiding the court in the administration of justice. Independent of the other branches of the Government, the courts can well take care of their own administration of the law."

The Anti-Graft and Corrupt Practices Act, an important legislation, should not be artificially construed so as to exclude the courts from the power to suspend - a prime tool designed by Congress to prevent the power which an official wields from frustrating the purity and certainty of the administration of justice. Surely, we should not be pedantically exacting in reading its provisions. We should rather say that if the court's power of suspension incident to the court proceedings is to be withheld or narrowed by construction, Congress should have spelled it out in no uncertain terms x x x.

The Court then hastened to clarify that such a view may not be taken as an encroachment upon the power of suspension given other officials, reiterating in the process that a line should be drawn between administrative proceedings and criminal actions in court, that one is apart from the other. Elucidating further on the possible danger which may arise if the power of suspension, in consequence of a criminal action under Republic Act No. 3019 is vested in any authority other than the court, it declared that:

There is reasonable ground to believe that Congress did really apprehend danger should the power of

suspension in consequence of a criminal case under the Anti-Graft and Corrupt Practices Act be lodged in any authority other than the court. Quite apart from the fact that the court has a better grasp of the situation, there is one other factor, and that is, the rights of the person accused. The court could very well serve as a lever to balance in one equation the public interests involved and the interests of the defendant. And then, there is the danger that partisan politics may creep in. The hand of political oppression cannot just be ignored especially if the majority members of the Provincial Board and the defendant public local elective officer are on opposite sides of the political fence. Power may be abused. Conversely, if both are of the same political persuasion, the suspending authority will display reluctance in exercising the power of suspension. It is thus that the statute should catch up with the realities of political life. There is indeed the dispiriting lesson that in a clash between political considerations and conscience it is the latter that quite often gets dented. xxx

xxx

Therefore, since suspension is incident to removal and should proceed from one who should logically do so, and considering that in the operation of a given statute fairness must have been in the mind of the legislators, we brush aside needless refinements, and rule 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 cases have long been on the line, unduly stretched beyond their logical parameters and the permissible time frame. Indeed, it is high time, ironically in fairness to petitioner himself, that the same be now calcined in the judicial crucible into their ultimate configuration.

WHEREFORE, premises considered, the petitions in G.R. Nos. 116259-60 and 118896-97 are hereby DISMISSED for lack of merit, with costs against the petitioner.

SO ORDERED.

Romero (Chairman), Puno, and Mendoza, JJ., concur.

[1] Annex G, Petition, G.R. Nos. 116259-60; Rollo, 90.

[2] Annex H-1, Id; Ibid., 109.

[3] Annex 1, Id.; Ibid., 112.

[4] Annex C, Petition, G.R. Nos. 118896-97; Rollo, 68.

[5] Petition, G.R. Nos. 116259-60; Rollo, 221-225.

[6] Annex A, Petition, ,G.R. Nos. 118896-97; Rollo, 53.

[7] Petition, G.R. Nos. 116259-60; Rollo, 185.

[8] Id.; id.; Ibid., 261.

[9] Annex B, Petition, G.R. Nos. 118896-97; Rollo, 55.

[10] G.R. Nos. 72335-39, March 21, 1988, 159 SCRA 70.

[11] Petition, G.R. Nos. 116259-60; Rollo, 95-97.

[12] Dacanay vs. People, et al., G.R. No. 101302, January 25, 1995, 240 SCRA 490.

[13] G.R. Nos. 70332-43, November 13, 1986, 145 SCRA 508.

- [14] Gallego, et al. vs. Sandiganbayan, G.R. No. 57841, July 30, 1982, 115 SCRA 793.
- [15] Cruz, Jr. vs. Court of Appeals, G.R. No. 83754, February 18, 1991, 194 SCRA 145.
- [16] People vs. Maravilla, et al., G.R. No. L-47646, September 19, 1988, 165 SCRA 392.
- [17] Reyes vs. Camilon, et al., L-46198, December 20, 1990, 192 SCRA 445.
- [18] People vs. Maravilla, et al., supra, fn. 16.
- [19] U.S. vs. Tolentino, 5 Phil. 682 (1906).
- [20] People vs. Casiano, L- 15309, February 16, 1961, 1 SCRA 478.
- [21] Doromal vs. Sandiganbayan, et al., G.R. No. 85468, September 7, 1989, 177 SCRA 354.
- [22] G.R. No. 50054, August 17, 1988, 164 SCRA 421.
- [23] Cruz, Jr. vs. Court of Appeals, supra, fn. 15.
- [24] Reyes, Jr. vs. Camilon, supra, fn. 17.
- [25] As amended by Section 5 of B.P. 195, approved on March 16, 1982.
- [26] See People vs. Albano, etc., et al., L-45376-77, July 28, 1988, 163 SCRA 511.
- [27] L-32950, July 30, 1971, 40 SCRA 187.
- [28] People vs. Albano, etc., et al., supra, fn. 26.
- [29] Bayot vs. Sandiganbayan, et al., G.R. Nos. 61776-61861, March 23, 1984, 128 SCRA 383.
- [30] Bolastig vs. Sandiganbayan, et al., G.R. No. 110503, August 4, 1994, 235 SCRA 103.
- [31] People vs. Albano, etc., et al., supra, fn. 26.
- [32] People vs. Enriquez, G.R. No. 102955, March 22, 1993, 220 SCRA 325.
- [33] Reyes vs. Camilon, supra, fn. 24.
- [34] U.S. vs. Abanzado, 37 Phil. 658 (1918).
- [35] L-30306, June 20, 1969, 28 SCRA 517.

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