REPUBLIC OF THE PHILIPPINES
Saudiganbayan
Quezon City

FOURTH DIVISION

SB-06-CRM-0457 to 0464
PEOPLE OF THE PHILIPPINES,
Plaintiff

-versus-

MILAGROSA TEE TAN, ET AL.,
Accused.

October 20, 2008

NOTICE OF RESOLUTION

TO:

Office of the Special Prosecutor
RECEIVED
DATE 10/21/08
TIME 1:40
BY
RECORDS SECTION

OFFICE OF THE SPECIAL PROSECUTOR
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5th Floor, Sandiganbayan, Centennial Buuilding
Quezon City

THE HONORABLE SECRETARY
Department of Interior and Local Government (DILG)
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LAW FIRM OF ANACLETO M. DIAZ & ASSOCIATES
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Ortigas Center, Pasig City
Atty. Anacleto M. Diaz
Atty. Armin N. B. Villamonte
Counsel for accused Milagrosa T. Tan

SIRS:

(please see back page)

You are hereby notified by these presents that on the 17th day of **October**, 2008, **RESOLUTION – 12 pages (Cert. True Photocopy)** was promulgated in the above-entitled cases, copy of which is hereto attached

JOFFREE GIL C. ZAPATA
Executive Clerk of Court III

NOTE: PLEASE NOTIFY THE OFFICE OF ANY CHANGE IN YOUR ADDRESS

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REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-06-CRM-0457
To SB-06-CRM-0464

-versus-

Present:
ONG, J.: Chairman
HERNANDEZ, J and
MARTIRES, J.*

MILAGROSA TEE TAN, ET AL.,
Accused.

Promulgated on:
October 17, 2008

x ---------- x

RESOLUTION

This resolves the Motions for Reconsideration[2] filed by Milagrosa T. Tan ("accused Tan"), Rolando B. Montejo ("accused Montejo") and Maximo D. Sison, Jr. ("accused Sison") and together with the Comments/Oppositions[3] subsequently filed by the plaintiff, the Reply[3] filed by Tan and Sison, Jr. and the Rejoinders[4] filed by the plaintiff.

Accused Tan, Montejo and Sison seek a reconsideration of this Court's Resolution promulgated on 11 July 2008. Considering that the arguments are interrelated and the same relief is prayed for, this Court opts to issue a consolidated ruling.

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* Sitting as Special Member per Adm. Order No. 154-2007 dated December 21, 2007.
[2] Motion for Reconsideration of Tan (of Resolution dated 11 July 2008), dated and filed on 22 July 2008; Motion for Reconsideration of Montejo, dated and filed on 25 July 2008; and, Motion for Reconsideration of Sison, Jr., dated and filed on 29 July 2008.
[3] Comment/Opposition (to Tan's MR), dated and filed on 24 July 2008, Comment/Opposition (to Montejo's MR), dated and filed on 23 July 2008; and Comment/Opposition (to Sison's MR), dated and

Accused Tan based her motion[6] on the following grounds:

1. There exists no factual basis to show that she intimidated witnesses. COA was in possession of the evidence and has already concluded its investigation. Moreover, there is no proof of malfeasance. Thus, the purpose of the law to impose preventive suspension does not exist.

2. The preventive suspension imposed by this Court is penal because it deprives her of the right to serve her constituents and deprives her of her salary. The crimes alleged were committed prior to her re-election on May 2007.

In its Comment/Opposition[9] to this Motion, plaintiff averred that the motion should be denied for utter lack of merit. *First.* There were signs of intimidation shown by accused Tan. She removed witness Bardaje and reassigned witness Legaspi. *Second.* It is the ministerial duty of this Court to preventively suspend based on Berona[7], Socrates[8] and Barrera[9] cases. It is not a penalty but a measure of precaution, as ruled by the Supreme Court in the Bautista[10] case. *Third.* It is sufficient that there exists a possibility that the grounds for the imposition exist.

In her Reply[11], accused Tan averred that she removed Bardaje from service as Administrative Officer due to the latter's absence without leave for 30 days.[12] On the other hand, Legaspi was not reassigned but he is still a Records Officer I at the Provincial General Services Office as evidenced by his service record issued on August 1, 2008.[13]

The prosecution submitted a Rejoinder[14] saying that Bardaje's absence was a result of his reassignment to Basey District Hospital from the Provincial Health Office. This

[6] Motion for Reconsideration of Tan (of Resolution dated 11 July 2008), dated and filed on 22 July 2008.
[9] Comment/Opposition (to Tan's MR), dated and filed on 24 July 2008
[7] Berona vs. Sandiganbayan, GR No. 142456, July 27, 2004
[8] Socrates vs. Sandiganbayan, 253 SCRA 773,
[9] Barrera vs. People, GR No. 145233-52, May 28, 2004
[10] Bautista vs. People, GR No. 145229, May 28, 2004

reassignment amounted to harassment vis-à-vis constructive dismissal and was timely appealed with the Civil Service Commission Regional Office VIII. As regards Legaspi, his designation as Property Inspector at the General Services Office was withdrawn by the Provincial Government of Samar.

Accused Montejo based his motion[15] on the following grounds:

1. He already questioned the validity of the information before the Supreme Court. Thus, one of the requirements for imposition of preventive suspension is not met.

2. It is unfair to preventively suspend him even before the Supreme Court could rule on the validity of the information more so if it will annul the information, invoking the Eternal Gardens[16] case.

The prosecution submitted a Comment/Opposition[17] saying that pursuant to AM No. 07-7-12-SC, amending Rule 65 (December 27, 2007), it is mandatory for this Court to proceed with the cases including the imposition of preventive suspension when proper for failure to secure an injunctive writ within 10 days. Otherwise, this Court will be liable.

Accused Sison based his motion[18] on the following grounds:

1. There exists a bar from prior judgment considering that in Sison vs. Labendia (CA GR SP No. 96611), the case was dismissed for insufficiency of evidence.

2. As ruled in Constantino vs. Sandiganbayan (GR No. 140656, September 13, 2007), findings in an administrative case are binding on a criminal case involving the same set of facts.

3. In Luciano vs. Mariano[19], the Supreme Court has ruled that there is no specific rule for pre-suspension hearing and the accused may file a motion to quash based on Rule 117. Thus, accused Sison moves to quash

the information and the suspension order against him based extinguishment of criminal action or liability in Rule 117 Section 3 (g).

In its Comment/Opposition[20], the prosecution averred that none of the modes of extinguishment of criminal liability under Article 89 of the Revised Penal Code exist. It is the ministerial duty of this Court to impose a preventive suspension (Barrera vs. People)[21]. It reiterated that it is not a penalty (Bautista vs. Peralta)[22].

In his Reply[23], accused Sison reiterates Constantino vs. Sandiganbayan ruling. He asserted that findings in an administrative case cannot be resurrected. Also, Section 3(g) Rule 117 mentions extinguishment of criminal action/liability which is present in this case.

The prosecution filed a Rejoinder[24] saying that the Constantino ruling does not apply in this case. The accused in Constantino was not convicted in the criminal case due to the finding in the administrative case that there was no gross inexcusable negligence. Moreover, the bases for criminal and administrative liability are different, as ruled by the Supreme Court in Valencia vs. Sandiganbayan[25].

Ruling

This Court finds the motions for reconsideration bereft of merit. The arguments presented by the accused do not sufficiently convince this Court to reverse its challenged resolution.

Mandatory Nature of Preventive Suspension

Accused Tan argues that it is unreasonable to place her under preventive suspension considering the absence of fact showing that she intimidated witnesses. This Court finds the argument devoid of merit.

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[20] Comment/Opposition (to Sison's MR), dated and filed on 4 August 2008.
[21] See Note 9.

This issue was already passed upon by this Court in the previous resolution. In a number of cases, the Supreme Court has reiterated the mandatory nature of preventive suspension. In a recent ruling in Villaseñor vs Sandiganbayan[26], it said that.

"It is well-settled that preventive suspension under Section 13 of R.A. No. 3019 is mandatory. It is evident from the very wording of the law:

> *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 the government or public funds or property, whether as a simple or as a complex offense and in whatever stage of the execution and mode of participation, is pending in court, shall be suspended from office. . . .*

A whole slew of cases reinforce this provision of law. In Luciano v. Provincial Governor, the Court pronounced that suspension of a public officer under Section 13 of R.A. No. 3019 is mandatory. This was reiterated in People v. Albano, Gonzaga v. Sandiganbayan and Bunye v. Escareal. In the last mentioned case, the Court said:

Adhering to this Court's observation in Ganzon v. CA, 200 SCRA 272, 272, that the sole objective of an administrative suspension is "to prevent the accused from hampering the normal course of the investigation with his influence and authority over possible witnesses or to keep him off the records and other evidence" and "to assist prosecutors in firming up a case, if any, against an erring official," the petitioners insist that as no such reason for their suspension exists, then the order suspending them should be set aside as a grave abuse of the court's discretion. x x x

The Court finds no merit in those arguments. Section 13 of R.A. No. 3019, as amended, unequivocally provides that the accused public officials "shall be suspended from office" while the criminal prosecution is pending in court.

In Gonzaga v. Sandiganbayan, 201 SCRA 417, 422, 426, this Court ruled that such preventive suspension is mandatory; there are no ifs and buts about it.

x----------x

Again, in Bolastig v. Sandiganbayan, the Court stressed the mandatory nature of preventive suspension as follows.

... It is now settled that Sec. 13 of Republic Act No. 3019 makes it mandatory for the Sandiganbayan to suspend any public official against whom a valid information charging violation of that law, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property is filed. The court trying a case has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continuing 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.

Clearly, there can be no doubt as to the validity of the Sandiganbayan's suspension of petitioners in connection with the pending criminal case before it. It was merely doing what was required of it by law."

Assuming *arguendo* that accused Tan did not intimidate the witnesses, this does not convince this Court to reverse its previous resolution given the mandatory nature of preventive suspension *pendente lite*. Also, the prosecution would like to impress upon this Court that certain acts of the accused showed signs of intimidation. As regards witness Bardaje, his appointment provides that his place of assignment is at the Provincial Health Office of Samar. But, accused Tan reassigned him to Basey District Hospital against his will. As a sign of protest, he refused to report to work at his new place of assignment. Bardaje's reassignment connotes harassment on the part of the witness who instantaneously filed an appeal with the Civil Service Commission. He was removed from office due to absence without leave (AWOL) or for not reporting to his new place of assignment. As regards witness Legaspi, the prosecution averred that accused Tan ordered his reassignment.

On the success or failure of the prosecution to prove that accused Tan intimidated witness or committed malfeasance in office, this Court reiterates its previous ruling placing the accused under preventive suspension *pendente lite*. The court trying a case has neither the duty nor discretion to verify whether preventive suspension is required to prevent the accused from using her office to intimidate witnesses or frustrate her prosecution or continuing committing malfeasance in office. The presumption is that unless the accused is suspended, she may frustrate her prosecution or commit further acts of malfeasance or do both.[27] No ifs and buts about it.[28]

The same reasoning can be applied with regard to accused Tan's claim that the order placing her under preventive suspension deprives her of the right to her salary as well as the right to serve her constituents. Moreover, as ruled by this Court in its July 11, 2008 Resolution, public officers are not indispensable and can be placed under preventive suspension, invoking the Supreme Court pronouncement in Torres vs. Garchitorena[29].

> *"There will always be other persons who can be appointed to the temporarily vacated offices and the law has seen to that in many instances with due regard to the situation cited by the accused therein.*
>
> *"The Supreme Court in the case of Bunye vs. Escareal, 226 SCRA 332, upheld the order of suspension issued against the accused and disposed of this issue in this wise:*
>
> > *The fear of the petitioners that the municipal government of Muntinlupa will be paralyzed for ninety (90) days when they (petitioners) are preventively suspended is remote. There will still remain eight (8) councilors who can meet as the Sangguniang Bayan. The President or his alter ego, the Secretary of Interior and Local Government, will surely know how to deal with the problem of filling up the temporary vacant positions of mayor, vice-mayor and six councilors in accordance with the provisions of the Local Government Code, Republic Act No. 7160. . . ."*

The Supreme Court has not issued a Temporary Restraining Order (TRO) or a writ of preliminary injunction.

Montejo again argued that pending resolution of the Supreme Court of his Petition for Certiorari and Prohibition with prayer for issuance of a Temporary Restraining Order (TRO), one of the grounds to make the imposition of preventive suspension valid, i.e. validity of the Information, is absent. He averred that it would be unfair on his part to be preventively suspended *pendente lite* given that the Supreme Court has yet to rule on his petition and more so, if the Supreme Court annuls the information in his favor.

This Court has already passed upon this issue in its previous resolution. Also, under AM No. 07-7-12-SC, it is provided that the petition shall not interrupt the principal case in the absence of a temporary restraining order or a writ of preliminary injunction and that failure to proceed with the principal case may be a ground for an administrative charge.[30] More so, that the Supreme Court has already dismissed Montejo's petition.[31]

Criminal and administrative cases are separate and distinct.

Accused Sison argues that following the Supreme Court's ruling in Luciano vs Mariano (40 SCRA 187, 1971), he moves to quash the information and the order placing him under preventive suspension because of the extinguishment of criminal liability or action under Section 3 (g) Rule 117 of the Rules of Court. He claims that there is a bar from prior judgment when in CA GR. SP No. 96611, the administrative case against him was dismissed for insufficiency of evidence. He invoked Constantino vs. Sandiganbayan[32].

This Court finds the Constantino case inapplicable. It is not on all fours with this case. In Constantino, the Supreme Court exonerated the accused in the criminal case. It said that the finding in the administrative case (Constantino vs. Desierto[33]) that gross inexcusable negligence did not exist is binding in the criminal case. It explained that

[30] Amendments to Rules 41, 45, 58, and 65 of the Rules of Court, December 4, 2007.
[31] G.R. No. 182625.
[32] GR No. 140656, September 13, 2007.

ineluctably, the same evidence cannot with great reason satisfy the higher standard in criminal cases which is evidence beyond reasonable doubt. It said that, "*The prosecution failed to present proof that accused actuated with malice or fraud sufficient to meet the requirement of proof beyond reasonable doubt.*"[34] On the other hand, this case involves a different set of facts. Assuming *arguendo* that gross inexcusable negligence cannot be rightfully imputed to accused Sison, he can still be held criminally liable considering that there are other modes of violating Section 3 (e) of R.A. 3019 i.e., manifest impartiality and evident bad faith. The prosecution has yet to present evidence and prove the presence of manifest impartiality or evident bad faith.

The prosecution is correct in saying that none of the modes of extinguishment of criminal liability provided under Article 89 of the Revised Penal Code is present in this case. Thus, the argument of accused Sison does not hold water. Article 89 of the Revised Penal Code provides:

> *How criminal liability is totally extinguished.— Criminal liability is totally extinguished:*
>
> 1. *By the death of the convict;*
> 2. *By service of the sentence;*
> 3. *By amnesty;*
> 4. *By absolute pardon;*
> 5. *By prescription of the crime;*
> 6. *By prescription of the penalty;*
> 7. *By the marriage of the offended woman, as provided in Article 344 of this Code.*

Criminal and administrative cases are separate and distinct from each other. A resort to one as remedy does not preclude a resort to the other simultaneously or successively. Thus, the argument of accused Sison, that the findings in the administrative case against him are binding upon the criminal case filed later, falls.

It behooves this Court to include a discussion as regards the difference between the two remedies. Notably, three kinds of remedies are available against a public officer for improper performance of his duties namely, civil, criminal, and administrative. These may

be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.[35] In ruling whether a preventive suspension in an administrative proceeding will bar a preventive suspension in a criminal case founded on the same facts and circumstances, the Supreme Court ruled in the negative saying.

> *"Defeat of any of the three remedies will not necessarily preclude resort to other remedies or affect decisions reached thereunder, as different degrees of evidence are required in these several actions. In criminal cases, proof beyond reasonable doubt is needed whereas a mere preponderance of evidence will suffice in civil cases. In administrative proceedings, only substantial evidence is required.*
>
> *It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. Verily, administrative cases may proceed independently of criminal proceedings.*
>
> *Socrates v. Sandiganbayan, citing the Court's pronouncements in Luciano v. Provincial Governor, recounted:*
>
> *The Court then hastened to clarify that such a writ 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. . .*
>
> *Based on the foregoing, criminal actions will not preclude administrative proceedings, and vice-versa, insofar as the application of the law on preventive suspension is concerned."*[36]

Preventive suspension not a penalty

Preventive suspension *pendente lite* is not a penalty but merely a measure of precaution so that the accused may be separated, for obvious reasons, from the office he is

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[35] Sobremente v. Enrile, G.R. No. L-60602, September 30, 1982, 117 SCRA 618, 625, citing Villaber v. Diego, G.R. No. L-58064, October 23, 1981, 108 SCRA 468, 472
[36] Villaseñor vs Sandiganbayan, G.R. No. 180700, March 4, 2008.

holding. The Supreme Court distinguished preventive suspension from penalty saying that the former may be imposed on a respondent during the investigation of the charges against him, the latter may be meted out to him at the final disposition of the case.[37] In Villaseñor, the Supreme Court[38] stated:

> *The Court's discussion in Quimbo v. Gervacio is enlightening:*
>
> *Jurisprudential law establishes a clear-cut distinction between suspension as preventive measure and suspension as penalty. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved.*
> *Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty.*
>
> *That preventive suspension is not a penalty is in fact explicitly provided by Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other Pertinent Civil Service Laws.*
>
> *Sec. 24. Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure.*
>
> *The accused public officers whose culpability remains to be proven are entitled to the constitutional presumption of innocence. The law itself provides for the reinstatement of the public officer concerned and payment to him of the salaries and benefits for the duration of the suspension in the event of an acquittal."*

In the same case, the Supreme Court emphasized that Sec. 13 of R.A. No. 3019 not a penal provision but a procedural one. Preventive suspension is not a penalty at all. It is a procedural rule. It said:

"It is procedural in nature. Hence, the strict construction rule finds no application. The Court expounded on this point in Buenaseda v. Flavier:

Penal statutes are strictly construed while procedural statutes are liberally construed (Crawford, Statutory Construction, Interpretation of Laws, pp. 460-461; Lacson v. Romero, 92 Phil. 456 [1953]). The test in determining if a statute is penal is whether a penalty is imposed for the punishment of a wrong to the public or for the redress of an injury to an individual (59 Corpus Juris, Sec. 658, Crawford, Statutory Construction, pp. 496-497). A Code prescribing the procedure in criminal cases is not a penal statute and is to be interpreted liberally (People v. Adler, 140 N.Y. 331; 35 N.E. 644)."

The rest of the arguments are mere reiterations of previous arguments which were already passed upon by this Court in the resolution of the accused' motions to quash.

ACCORDINGLY, the Motions for Reconsideration filed by accused Milagros T. Tan, Rolando B. Montejo and Maximo D. Sison are DENIED. The Resolution promulgated on 11 July 2008, stays.

SO ORDERED.

Quezon City, Metro Manila, Philippines.

JOSE R. HERNANDEZ
Associate Justice

WE CONCUR:

GREGORY S. ONG
Associate Justice
Chairman

SAMUEL R. MARTIRES
Associate Justice