Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **MARCH 24, 2015**, *which reads as follows:*

"G.R. No. 214271 – JUAN PONCE ENRILE, *Petitioner*, v. *SANDIGANBAYAN* (THIRD DIVISION) AND THE PEOPLE OF THE PHILIPPINES, *Respondents.*

RESOLUTION

This is a Petition for Certiorari with Prayer for the Court En Banc to Act on the Petition and with Application for Status Quo Order and/or Temporary Restraining Order filed by Senator Juan Ponce Enrile against the *Sandiganbayan*'s Third Division[1] and the People of the Philippines. Petitioner was accused of the crime of Plunder under Republic Act No. 7080 ("Anti-Plunder Law") in Criminal Case No. SB-14-CRM-0238.

Senate President Juan Ponce Enrile ("Petitioner") was charged with the crime of Plunder in connection with the Pork Barrel/Janet Napoles controversy, wherein he was alleged to have funnelled his Priority Development Assistance Fund allocations into dummy corporations and non-governmental organizations controlled by Janet Napoles and received a kickback therefrom. The plunder case was filed before the *Sandiganbayan* and docketed as SB-14-CRM-0238.

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[1] Presiding Justice Cabotaje-Tang (*ponente*), with Justices Martires and Quiroz.

This Petition seeks the nullification of the *Sandiganbayan*'s Resolution dated 24 July 2014[2] which granted the Motion to Suspend Accused *Pendente Lite* filed by the Prosecution, as well as the Resolution dated 22 August 2014,[3] denying the Motion for Reconsideration of Petitioner that pertained to the prior Resolution.

The Petition also asks for an *ex parte status quo* order, or a temporary restraining order against the *Sandiganbayan* or anyone acting on its behalf from suspending or continuing to suspend Petitioner from office, and render judgment finding the injunction permanent and annulling both *Sandiganbayan* Resolutions.

The *Sandiganbayan* granted the motion to suspend accused *pendente lite* based on Section 5 of the Anti-Plunder Law, which provides for preventive suspension from office of an accused public officer when a valid Information under the law is pending in court. Since this provision had never been invoked, the *Sandiganbayan* used by analogy the jurisprudence on Republic Act No. 3019 ("Anti-Graft Law"). Based on jurisprudence, the *Sandiganbayan* made the following findings:

First, the Information was already previously upheld as valid.[4]

Second, *Santiago v. Sandiganbayan* applies in conjunction with Section 5 of the Anti-Plunder Law. In that case, this Court held valid the *Sandiganbayan*'s suspension order against Senator Santiago because preventive suspension under the Anti-Graft Law is not a penalty, as opposed to the suspension power given by the Constitution solely to Congress over its members, which is punitive in nature.

Thus, the *Sandiganbayan* granted the prosecution's motion and ordered Petitioner's suspension from office.

Before this Court, Petitioner now argues that this Court's jurisprudence should be revisited. Specifically, he argues that *Santiago v. Sandiganbayan* was ineffective since, for 10 years since that decision, no

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2 Rollo, pp. 59-77.
3 Rollo, pp. 78-91.
4 The said Information is still subject to a motion for bill of particulars pending before this Court.

member of Congress has actually been suspended by the *Sandiganbayan* and sanctioned by Congress except very recently.

He also argues that the *Sandiganbayan* acted in grave abuse of discretion because it suspended him despite the pendency of a challenge to the validity of the Information against him, specifically G.R. No. 213455 which is pending before this Court.

Additionally, Petitioner posits that preventive suspension under the Anti-Plunder Law is an administrative measure that may only be imposed by the legally competent disciplinary authority over him, which is the Senate. He argues that while preventive suspension and suspension *per se* are different from each other as a penalty, both have the same administrative character as an imposition in connection with the enforcement of administrative liability for an unlawful act or omission. Thus the only proper enforcing body would be the Senate, since members of Congress are excluded from the Ombudsman's disciplinary authority. The *Sandiganbayan* thus allegedly violated the separation of powers doctrine embodied by that exclusion.

Finally, Petitioner claims that the *Santiago v. Sandiganbayan* ruling was crafted from the wrong issue of whether the Anti-Graft Law covered Congress, which he acknowledges to be true. He submits that the question in this case is not about the coverage of the law but whether the enforcement of administrative liability should be made by the competent disciplining authority, or the court presiding over the proceedings.

At the outset, the Petition must be dismissed for being moot and academic, since it has ceased to present a justiciable controversy by virtue of supervening events.

Firstly, as of 1 December 2014, **Petitioner's preventive suspension has already been served and lifted.**[5]

Secondly, because of the expiration of the suspension, the Resolutions of the *Sandiganbayan* being assailed by this Petition have lost efficacy.

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[5] Comment, p. 16. Emphasis supplied.

Thirdly, the exceptions to the mootness doctrine do not arise under the circumstances of this case.

We have previously stated in *Mendoza v. Mayor Villas* that

> [a] moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.[6]

The rationale for this is explained in *Fernandez v. Commission on Elections*, wherein this Court reasoned that

> [i]t is thus an exercise in futility for the Court to indulge itself in a review of the records and in an academic discussion of the applicable legal principles x x x x because whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced.[7]

Considering that the remedy sought by Petitioner is the nullification of two Resolutions that have been rendered obsolete by the passing of the 90-day suspension period, there is no reason for this Court to delve into the additional, though tangential matters raised by the Petition.

In *David v. Arroyo*, we discussed the exceptions to the general rule on mootness. In any of the four instances raised in Arroyo, this Court is not limited to dismissing an already moot petition. We stated that

> [t]he "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when constitutional issue raised requires formulation of controlling principles to

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6 G.R. No. 187256, 23 February 2011.
7 G.R. No. 176296, 30 June 2008.

> guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.[8]

None of the exceptions exist in this case, as has been continually held in cases wherein public officials have questioned their suspension *pendente lite*.

In fact, we recently stated that in a moot case, "there is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition."[9] Here, the dismissal of this case - considering the continuation of the proceedings in the *Sandiganbayan* to determine the guilt or innocence of Petitioner - does not prevent him from availing of any remedy he is entitled to by law in the proceedings below.

Finally, we must reject Petitioner's creative attempt to present this case as a clash between the various separate powers of government. Preventive suspension has long been regarded as a necessary adjunct of the prosecutorial process against powerful public officials, as represented by Section 13 of Republic Act No. 3019 which isalmost exactly copied by Section 5 of the Anti-Plunder Law. The distinction does not fall between whether the liability involved is administrative or criminal, as Petitioner posits,[10] but between the measure provided by law being punitive or preventive in nature as had been already determined in *Santiago v. Sandiganbayan*.[11] In his effort, Petitioner has also misconstrued the power exercised: it is not the Ombudsman's power to suspend and discipline under the Ombudsman Act that has been invoked in this case; rather, it is the *Sandiganbayan*'s mandatory duty under Section 5 of the Anti-Plunder Law wherein, should it find the Information valid, it is mandated to suspend the official accused. As Justice Mendoza categorically explained:

> It is now settled that sec. 13 of Republic Act No. 3019 makes it mandatory for the *Sandiganbayan* to suspend any public officer 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

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[8] G.R. No. 171396, G.R. No. 171409, G.R. No. 171485, G.R. No. 171483, G.R. No. 171400, G.R. No. 171489, G.R. No. 171424, 3 May 2006.

[9] Philippine Long Distance Telephone Company v. Eastern Telecommunications Philippines, Inc., G.R. No. 163037, 6 February 2013.

[10] Rollo, pp. 20-37.

[11] Santiago v. *Sandiganbayan*, G.R. No. 128055.18 April 2001.

> 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 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.
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> Our holding that, upon the filing of a valid information charging violation of Republic Act No. 3019, Book II, Title 7 of the Revised Penal Code, or fraud upon government or public property, it is the duty of the court to place the accused under preventive suspension disposes of petitioner's other contention that since the trial in the *Sandiganbayan* is now over with respect to the presentation of evidence for the prosecution there is no longer any danger that petitioner would intimidate prosecution's witnesses. The fact is that the possibility that the accused would intimidate witnesses or otherwise hamper his prosecution is just one of the grounds for preventive suspension. The other one is, as already stated, to prevent the accused from committing further acts of malfeasance while in office.[12]
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> (Underscoring supplied)

Hence, neither the *Sandiganbayan* nor the Ombudsman usurped the disciplinary authority of Congress over the members of the legislature as Petitioner asserts.[13] The preventive suspension in this instance was granted explicitly by law and not conferred by the Administrative Code,[14] and is distinct from the latter because it is, as Justice Mendoza stated, mandatory and not discretionary on the part of the courts.[15] Given the jurisprudential

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12 *Bolastig* v. *Sandiganbayan*, G.R. No. 110503, 4 August 1994.
13 Rollo, pp. 34-40.
14 Sections 51 and 52, Chapter 7, Subtitle A, Title I, Book V of Executive Order No. 292.
15 *Bunye v. Escareal*, G.R. No. 110216, 10 September 1993; *Gonzaga v. Sandiganbayan*, G.R. No. 96131, 6 September 1991.

strength of the Respondent's position, and that the *lis mota* of the case only tangentially interdicts questions on the constitutionality of the Anti-Plunder Law, then there is no necessity to delve into the constitutionality of the law's provision on suspension.There is no need to exercise our expanded review jurisdiction, *viz*:

> Petitioners would now have this Court strike down these resolutions because supposedly rendered in excess of jurisdiction or with grave abuse of discretion. The Court will not do so. In no sense may the challenged resolutions be stigmatized as so clearly capricious, whimsical, oppressive, egregiously erroneous or wanting in logic as to call for invalidation by the extraordinary writ of certiorari. On the contrary, in promulgating those resolutions, the *Sandiganbayan* did but adhere to the clear command of the law and what it calls a "mass of jurisprudence" emanating from this Court, sustaining its authority to decree suspension of public officials and employees indicted before it.[16]
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> (Underscoring supplied)

WHEREFORE, premises considered, the instant Petition is hereby **DENIED** for being **MOOT** and **ACADEMIC**." Carpio, J., on leave. (adv79)

Very truly yours,

ENRIQUETA E. VIDAL
Clerk of Court

[16] *Talaga v. Sandiganbayan*, G.R. No. 169888, 11 November 2008.

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