

TIME, INC., PETITIONER, VS. HON. ANDRES REYES, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, ELISEO S. ZARI, AS DEPUTY CLERK OF COURT, BRANCH VI, COURT OF FIRST INSTANCE OF ...

G.R. No. L-28882. May 31, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari and prohibition/with preliminary injunction, to annul certain orders of the respondent Court of First Instance of Rizal, issued in its Civil Case No. 10403, entitled "Antonio J. Villegas and Juan Ponce Enrile vs. Time, Inc., and Time-Life International, Publisher of 'Time' Magazine (Asia Edition)," and to prohibit the said court from further proceeding with the said civil case.

Upon petitioner's posting a bond of P1,000.00, this Court, as prayed for, ordered, on 15 April 1968, the issuance of a writ of preliminary injunction.

The petition alleges that petitioner Time, Inc.,[1] is an American corporation with principal offices at Rockefeller Center, New York City, N.Y., and is the publisher of "Time," a weekly news magazine; the petition, however, does not allege the petitioner's legal capacity to sue in the courts of the Philippines.[2]

In the aforesaid Civil Case No. 10403, therein plaintiffs (herein respondents) Antonio J. Villegas and Juan Ponce Enrile seek to recover from the herein petitioner damages upon an alleged libel arising from a publication of Time (Asia Edition) magazine, in its issue of 18 August 1967, of an essay, entitled "Corruption in Asia," which, in part, reads, as follows:

"The problem of Manila's mayor, ANTONIO VILLEGAS, is a case in point. When it was discovered last year that the mayor's coffers contained far more pesos than seemed reasonable in the light of his income, an investigation was launched. Witnesses who had helped him out under curious circumstance were asked to explain in court. One government official admitted lending Villegas P30,000 pesos (\$7,700) without interest because he was the mayor's compadre. An assistant declared he had given Villegas loans without collateral because he regarded the boss as my own son. A wealthy Manila businessman testified that he had lent Villegas' wife 15,000 pesos because the mayor was like a brother to me. With that, Villegas denounced the investigation as an invasion of his family's privacy. The case was dismissed on a technicality, and Villegas is still mayor." [3]

More specifically, the plaintiffs' complaint alleges, inter alia, that:

"(4) Defendants, conspiring and confederating, published a libelous article, publicly, falsely and maliciously imputing to Plaintiffs the commission of the crimes of graft, corruption and nepotism; that said publication particularly referred to Plaintiff Mayor Antonio J. Villegas as a case in point in connection with graft, corruption and nepotism in Asia; that said publication without any doubt referred to co-plaintiff Juan Ponce Enrile as the high government official who helped under curious circumstances Plaintiff Mayor Antonio J. Villegas in lending the latter approximately P30,000.00 (\$7,700.00) without interest because he was the Mayor's compadre; that the purpose of said publication is to cause the dishonor, discredit and put in public

contempt the Plaintiffs, particularly Plaintiff Mayor Antonio J. Villegas."

On motion of the respondents-plaintiffs, the respondent judge, on 25 November 1967, granted them leave to take the depositions "of Mr. Anthony Gonzales, Time-Life International," and "Mr. CesarB. Enriquez, Muller & Phipps (Manila) Ltd.," in connection with the activities and operations in the Philippines of the petitioner, and, on 27 November 1967, issued a writ of attachment on the real and personal estate of Time, Inc.

Petitioner received the summons and a copy of the complaint at its offices in New York on 13 December 1967 and, on 27 December 1967, it filed a motion to dismiss the complaint for lack of jurisdiction and improper venue, relying upon the provisions of Republic Act 4363. Private respondents opposed the motion.

In an order, dated 26 February 1968, respondent court deferred the determination of the motion to dismiss until after trial of the case on the merits, the court having considered that the grounds relied upon in the motion do not appear to be indubitable.

Petitioner moved for reconsideration of the deferment; private respondents again opposed.

On 30 March 1968, respondent judge issued an order reaffirming the previous order of deferment for the reason that "the rule laid down under Republic Act No. 4363, amending Article 360 of the Revised Penal Code, is not applicable to actions against non-resident defendants, and because questions involving harassments and inconvenience, as well as disruption of public service do not appear indubitable,. . ."

Failing in its efforts to discontinue the taking of the depositions, previously adverted to, and to have action taken, before trial, on its motion to dismiss, petitioner filed the instant petition for certiorari and prohibition.

The orders for the taking of the said depositions, for deferring determination of the motion to dismiss, and for re-affirming the deferment, and the writ of attachment are sought to be annulled in the petition.

There is no dispute that at the time of the publication of the allegedly offending essay, private respondents Antonio Villegas and Juan Ponce Enrile were the Mayor of the City of Manila and Undersecretary of Finance and concurrently Acting Commissioner of Customs, respectively, with offices in the City of Manila. The issues in this case are:

- Whether or not, under the provisions of Republic Act 4363, the respondent Court of First Instance of Rizal has jurisdiction to take cognizance of the civil suit for damages arising from an allegedly libelous publication, considering that the action was instituted by public officers whose offices were in the City of Manila at the time of the publication; if it has no jurisdiction, whether or not its erroneous assumption of jurisdiction may be challenged by a foreign corporation by writ of certiorari or prohibition; and

- Whether or not Republic Act 4363 is applicable to actions against a foreign corporation or non-resident defendant.

Provisions of Republic Act No. 4363, which are relevant to the resolution of the foregoing issues, read, as follows:

"Section 1. Article three hundred sixty of the Revised Penal Code, as amended by Republic Act Numbered Twelve hundred and eighty nine, is further amended to read as follows:

'ART. 360. Persons responsible.- Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

"The author or editor of a book or pamphlets or the editor or business manager of a daily newspaper, magazine

or serial publication, shall be responsible for the defamations contained therein to the extent as if he were the author thereof.

'The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense; Provided, however, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published; Provided, further, That the civil action shall be filed in the same court where the criminal action is filed and vice versa; Provided, furthermore, That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts; And provided finally, That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions which have been filed in court at the time of the effectivity of this law.

'x x x

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"Sec. 3. This Act shall take effect only if and when, within thirty days from its approval, the newspapermen in the Philippines shall organize, and elect the members of, a Philippine Press Council, a private agency of the said newspapermen, whose function shall be to promulgate a Code of Ethics for them and the Philippine press, investigate violations thereof, and censure any newspaperman or newspaper guilty of any violation of the said Code, and the fact that such Philippine Press Council has been organized and its members have been duly elected in accordance herewith shall be ascertained and proclaimed by the President of the Philippines."

Under the first proviso in Section 1, the venue of civil action for damages in cases of written defamations is localized upon the basis of, first, whether the offended party or plaintiff is a public officer or a private individual; and second, if he is a public officer, whether his office is in Manila or not in Manila, at the time of the commission of the offense. If the offended party is a public officer with office in the City of Manila, the proviso limits him to two (2) choices of venue, namely, "in the Court of First Instance of the City of Manila or in the city or province where the libelous article is printed and first published ..."

The complaint lodged in the court of Rizal by respondents does not allege that the libelous article was printed and first published in the province of Rizal, and, since the respondents-plaintiffs are public officers with offices in Manila at the time of the commission of the alleged offense, it is clear that the only place left for them wherein to

file their action is the Court of First Instance of Manila.

The limitation of the choices of venue, as introduced into the Penal Code through its amendment by Republic Act 4363, was intended "to minimize or limit the filing of out-of-town libel suits" to protect an alleged offender from "hardships, inconveniences and harassments" and, furthermore, to protect "the interest of the public service" where one of the offended parties is a public officer."^[4] The intent of the law is clear: a libeled public official must sue in the court of the locality where he holds office, in order that the prosecution of the action should interfere as little as possible with the discharge of his official duties and labors. The only alternative allowed him by law is to prosecute those responsible for the libel in the place where the offending article was printed and first published. Here, the law tolerates the interference with the libeled officer's duties only for the sake of avoiding unnecessary harassment of the accused. Since the offending publication was not printed in the Philippines, the alternative venue was not open to respondents Mayor Villegas of Manila and Undersecretary of Finance Enrile, who were the offended parties.

But respondents-plaintiffs argue that Republic Act 4363 is not applicable where the action is against a non-resident defendant, as petitioner Time, Inc., for several reasons. They urge that, in enacting Republic Act 4363, Congress did not intend to protect non-resident defendants-as shown by Section 3, which provides for the effectivity of the statute only if and when the "newspapermen in the Philippines" have organized a "Philippine Press Council" whose function shall be to promulgate a Code of Ethics for "them" and "the Philippine press"; and since a non-resident defendant is not in a position to comply with the conditions imposed for the effectivity of the statute, such defendant may not invoke its provisions; that a foreign corporation is not inconvenienced by an out-of-town libel suit; that it would be absurd and incongruous,TM the absence of an extradition treaty, for the law to give to public officers with office in Manila the second option of filing a criminal case in the court of the place where the libelous article is printed and first published if the defendant is a foreign corporation; and that, under the "single publication" rule which originated in the United States and imported into the Philippines, the rule was understood to mean that publications in another state are not covered by venue statutes of the forum.

The implication of respondents' argument is that the law would not take effect as to non-resident defendants or accused. We see nothing in the text of the law that would sustain such unequal protection to some of those who may be charged with libel. The official proclamation that a Philippine Press Council has been organized is made a pre-condition to the effectivity of the entire Republic Act No. 4363, and no terms are employed therein to indicate that the law can or will be effective only as to some, but not all, of those that may be charged with libeling our public officers.

The assertion that a foreign corporation or a non-resident defendant is not inconvenienced by an out-of-town suit is irrelevant and untenable, for venue and jurisdiction are not dependent upon convenience or inconvenience to a party; and moreover, venue was fixed under Republic Act No. 4363, pursuant to the basic policy of the law that is, as previously stated, to protect the interest of the public service when the offended party is a public officer, by minimizing as much as possible any interference with the discharge of his duties.

That respondents-plaintiffs could not file a criminal case for libel against a non-resident defendant does not make Republic Act 4363 incongruous or absurd, for such inability to file a criminal case against a non-resident natural person equally exists in crimes other than libel. It is a fundamental rule of international jurisdiction that no state can by its laws, and no court (which is only a creature of the state) can by its judgments or decrees, directly bind or affect property or persons beyond the limits of that state.^[5] Not only this, but if the accused is a corporation, no criminal action can lie against it, ^[6] whether such corporation be resident or nonresident. At any rate, the case filed by respondents-plaintiffs is not a criminal case but a civil case for damages.

50 Am. Jur. 2d 659 differentiates the "multiple publication" and "single publication" rules (invoked by private respondents) to be as follows:

"The common law as to causes of action for tort arising out of a single publication was to the effect that each communication of written or printed matter was a distinct and separate publication of a libel contained therein, giving rise to a separate cause of action. This rule ('multiple publication' rule) is still followed in several American jurisdictions, and seems to be favored by the American Law Institute. Other jurisdictions have adopted the 'single publication' rule, which originated in New York, under which any single integrated publication, such as one edition of a newspaper, book, or magazine, or one broadcast, is treated as a unit, giving rise to only one cause of action, regardless of the number of times it is exposed to different people, .. ."

These rules are not pertinent in the present case, because the number of causes of action that may be available to the respondents-plaintiffs is not here in issue. We are here confronted by a specific venue statute, conferring jurisdiction in cases of libel against public officials to specified courts, and no other. The rule is that where a statute creates a right and provides a remedy for its enforcement, the remedy is exclusive; and where it confers jurisdiction upon a particular court, that jurisdiction is likewise exclusive, unless otherwise provided. Hence, the venue provisions of Republic Act No. 4363 should be deemed mandatory for the party bringing the action, unless the question of venue should be waived by the defendant, which was not the case here. Only thus can the policy of the Act be upheld and maintained. Nor is there any reason why the inapplicability of one alternative venue should result in rendering the other alternative also inapplicable.

The dismissal of the present petition is asked on the ground that the petitioner foreign corporation failed to allege its capacity to sue in the courts of the Philippines. Respondents rely on Section 69 of the Corporation Law, which provides:

"SEC. 69. No foreign corporation or corporations formed, organized, or existing under any laws other than those of the Philippines shall be permitted to... maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding....";

They also invoke the ruling in *Marshall-Wells Co. vs. Elser & Co., Inc.*[7] that no foreign corporation may be permitted to maintain any suit in the local courts unless it shall have the license required by the law, and the ruling in *Atlantic Mutual Ins. Co., Inc. vs. Cebu Stevedoring Co., Inc.*[8] that "where... the law denies to a foreign corporation the right to maintain suit unless it has previously complied with a certain requirement, then such compliance or the fact that the suing corporation is exempt therefrom, becomes a necessary averment in the complaint." We fail to see how these doctrines can be a propos in the case at bar, since the petitioner is not "maintaining any suit" but is merely defending one against itself; it did not file any complaint but only a corollary defensive petition to prohibit the lower court from further proceeding with a suit that it had no jurisdiction to entertain.

Petitioner's failure to aver its legal capacity to institute the present petition is not fatal, for . . .

"A foreign corporation may, by writ of prohibition, seek relief against the wrongful assumption of jurisdiction. And a foreign corporation seeking a writ of prohibition against further maintenance of a suit, on the ground of want of jurisdiction, is not bound by the ruling of the court in which the suit was brought, on a motion to quash service of summons, that it has jurisdiction." [9]

It is also advanced that the present petition is premature, since respondent court has not definitely ruled on the motion to dismiss, nor held that it has jurisdiction, but only deferred resolution thereon until the case is heard on its merits. The argument is untenable. The motion to dismiss was predicated on the respondent court's lack of jurisdiction to entertain the action; and the rulings of this Court are the writs of certiorari or prohibition, or both,

may issue in case of a denial or deferment of action on such a motion to dismiss for lack of jurisdiction.

"If the question of jurisdiction were not the main ground for this petition for review by certiorari, it would be premature because it seeks to have a review of an interlocutory order. But as it would be useless and futile to go ahead with the proceedings if the court below had no jurisdiction this petition was given due course.' (San Beda vs. CIR, 51 O.G. 5636, 5638).

"While it is true that action on a motion to dismiss may be deferred until the trial and an order to that effect is interlocutory, still where it clearly appears that the trial judge or court is proceeding in excess or outside of its jurisdiction, the remedy of prohibition would lie since it would be useless and a waste of time to go ahead with the proceedings. (Phillippine International Fair, Inc. et al. vs. Ibañez, et al., 50 Off. Gaz. 1036; Enriquez v. Macadaeg, et al., 47 Off. Gaz. 1207; see also San Beda College vs. CIR, 51 Off. Gaz. 5636)' University of Sto. Tomas v. Villanueva, L-13748, 30 October 1959)"

Similarly, in *Edward J. Neil Co. vs. Cubacub*, L-20843, 23 June 1965, 14 SCRA 419, this Court held:

". . . It is settled rule that the jurisdiction of a court over the subject-matter is determined by the allegations in the complaint; and when a motion to dismiss is filed for lack of jurisdiction those allegations are deemed admitted for purpose of such motion, so that it may be resolved without waiting for the trial. Thus it has been held the consideration thereof may not be postponed in the hope that the evidence may yield other qualifying or concurring data which would bring the case under the court's jurisdiction."

To the same effect are rulings in *Ruperto vs. Fernando*, 83 Phil. 943; *Administrative of Hacienda Luisita Estate vs. Alberto*, L-12133, 21 October 1958.

Summing up, We hold:

(1) That under Article 360 of the Revised Penal Code, as amended by Republic Act No. 4363, actions for damages by public officials for libelous publications against them can only be filed in the courts of first instance of the city or province where the offended functionary held office at the time of the commission of the offense, in case the libelous article was first printed or published outside the Philippines.

(2) That the action of a court in refusing to rule, or deferring its ruling, on a motion, or for improper venue, is in excess of jurisdiction and correctible by writ of prohibition or certiorari sued out in the appellate Court, even before trial on the merits is had.

WHEREFORE, the writs applied for are granted, the respondent Court of First Instance of Rizal is declared without jurisdiction to take cognizance of its Civil Case No. 10403; and its orders issued in connection therewith are hereby annulled and set aside. Respondent court is further commanded to desist from further proceedings in Civil Case No. 10403 aforesaid. Cost against private respondents, Antonio J. Villegas and Juan Ponce Enrile.

The writ of preliminary injunction heretofore issued by its Supreme Court is made permanent.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., took no part.

[1] It informs that Time-Life International is not made a co-petitioner for the reason that it is not a juridical person but a mere division of Time, Inc. (Petition, footnote at page 6).

[2] Petitioner alleged that it had offered to stipulate in the court below that its "activities in the Philippines could be considered doing business" but respondents refused to stipulate (Petition, page 6), although it stated in its

memorandum in lieu of oral argument, that it is "a corporation not doing business in the Philippines." (Memorandum, dated 31 July 1968, page 1).

[3] Rollo, page 26.

[4] Explanatory Note to H.B. 17057 which became Republic Act 4363.

[5] Perkins v. Dizon, 72 Phil. 579; 14 Am. Jur. 418.

[6] West Coast Life Ins. Co. v. Hurd, 27 Phil. 401.

[7] 46 Phil. 70, 76.

[8] L-18961, 31 August 1966, 17 SCRA 1037.

[9] 36 Am. Jur. 2d 520.

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