

**ROBERTO V. JUSTINIANI, AND VICENTE ALACAPA, PETITIONERS, VS.
B. JOSE CASTILLO, IN HIS CAPACITY AS PROVINCIAL FISCAL OF THE
PROVINCE OF RIZAL, RESPONDENT.**

G.R. No. L-41114. June 21, 1988

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FERNAN, J.:

This is a petition for Prohibition with Preliminary Injunction seeking to permanently enjoin respondent Jose Castillo, Provincial Fiscal of Pasig, Rizal from conducting a preliminary investigation of the criminal complaint for libel filed on July 15, 1975 by Brig. Gen. Montoya against the petitioners, Roberto Justiniani and Vicente Alacapa.

A complaint for damages for physical injuries was filed by the petitioners against Brig Gen. Montoya before the then CFI of Negros Occidental, docketed as Civil Case No. 11926. Brig. Gen. Montoya in a criminal complaint for Libel filed before the Office of the Provincial Fiscal [I.S. No. 75-7624] alleged that the aforesaid complaint for damages caused the publication of derogatory, scurrilous and highly libelous statements which tended to cause dishonor, discredit, public contempt and ridicule to his personal worth, integrity, honor and position.

The Respondent Fiscal, upon assuming jurisdiction over the aforesaid criminal complaint for libel, issued a subpoena and scheduled the preliminary investigation on August 4, 1975 at 3:00 o'clock in the afternoon.

Alleging that they were not furnished copies of the criminal complaint and the supporting affidavits, petitioners on August 1, 1975 requested copies thereof from the respondent Fiscal. They further alleged that petitioner Justiniani was "bedridden," and could not, therefore, appear at the preliminary investigation.

Petitioners were furnished copies of the complaint and supporting affidavits, and were required to submit counter-affidavits and to personally appear before the respondent Fiscal within ten (10) days from receipt of the above-mentioned pleadings. Petitioners instead filed a petition before this Court to enjoin the respondent Fiscal from proceeding with the preliminary investigation on the ground that the allegations in the complaint for damages are "privileged," which can not, therefore, be libelous.

On August 11, 1975, We resolved to issue a temporary restraining order and to require respondent to answer.

The sole issue posed for our determination is whether or not the respondent Fiscal may be restrained from conducting a preliminary investigation on a complaint for libel instituted on the basis of statements embodied in a separate complaint.

Respondent Fiscal, in his memorandum, contended that certain allegations in the complaint for damages are not pertinent and relevant to the action for damages for physical injuries and are thus not privileged, to wit:

"IV —xxx but General Montoya and his group, losing all decency expected of officers and soldiers of the Armed Forces of the Philippines barbarically and continuously physically assaulted plaintiff who was helpless in defending himself considering their superior strength and number, and were it not for the timely pleas of his employer, Mrs. Enaida Vda, de Montilla, plaintiff could have lost his remaining breath due to the merciless

beating he was ignominiously subjected to which is reminiscenced of the Kempefai and Gestapo technique of subjugation.

"V — That the indescribable humiliation and physical injuries suffered, by plaintiff could have been worse were it not for the intercession of one of his companion by the name of Sgt. Heracleo Severino who pacified the ruthless attackers of plaintiff by identifying himself as a constabulary man but instead of listening to the request for sobriety, the latter was also manhandled, the sudden shift of attack by defendants enabled plaintiff herein to stand up and seek refuge inside the counter while defendants were busy assaulting Sgt. Severino who later on succeeded in pacifying them but not for long since defendants thirst for cruelty had not yet been quenched. x x x"

"VI — That Vicente Alacapa mustered enough courage to plead to defendants to desist from further infliction of physical harm to his co-plaintiff who was all the time innocent of their shallow and fabricated charges, but Gen. Montoya who had gone berserk boxed. xxx. [Italics supplied]

"VIII — That the other quests and spectators who personally witnessed the inhuman atrocities committed against a helpless and innocent civilian were all one in voluntarily condemning said acts of defendants xxx abhorring said animalistic and jungle law exemplified by defendants.

AS SECOND CAUSE OF ACTION

"I — That the despicable conduct demonstrated by defendants is an affront not only to plaintiffs but to the tenets of the New Society, and the fact that they are high ranking military officers aggravate their contempt for law and order, such lack of human compassion and the illegal and arrogant display of power on a helpless and innocent civilian xxx" [italics supplied], (pp. 99-100, Rollo)

The prevailing jurisprudence in this jurisprudence, particularly in the case of *Sison vs. David* [G.R. No. L-11268, Jan. 28, 1961] is that statements made in a pleading in a civil action are absolutely privileged and no action for libel may be founded thereon provided such statements are pertinent and relevant to the subject under inquiry, however false and malicious they may be. In *People vs. Aquino* [L-23908, October 29, 1966, 18 SCRA 555, 558] We held that the person who freely articulated himself while exercising his duty under the express authority of law. may he be the judge, lawyer or witness, does not expose himself to the risk of criminal prosecution or of an action for damages.

If the rule were otherwise, the courts would be flooded with libel suits from irate litigants who will be suing each other on the basis of each and every pleading. Such a rule will breed endless vexatious litigations contrary to public policy and the orderly administration of justice.

The statements complained of pass the test of relevancy and materiality. Although the language used was harsh and antagonistic, they were merely descriptive of the manner by which the alleged injuries were inflicted upon the petitioners. Furthermore, the words were used to emphasize petitioners' allegation that the defendant in Civil Case No. 11926, a public official, took advantage of his position; and to prove his capacity to commit the alleged wrong. Certainly, if proven to be true, the allegations would carry much weight in determining the award of moral damages that may be awarded to petitioners. They are, in this manner, relevant and material to the subject of inquiry. Consequently, these allegations are privileged and, therefore, not actionable.

On the issue of whether the Provincial Fiscal may be perpetually enjoined from conducting a preliminary investigation, We have ruled in various cases[*] that generally, injunction or prohibition does not lie to restrain a criminal prosecution. But as is usually the case, certain exceptions to this rule obtain. The case of *Hernandez vs. Albano, et al*, 19 SCRA 95 states thus:

"Extreme cases may, and actually do, exist where relief in equity may be availed of to stop a purported

enforcement of a criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection of constitutional rights; and (e) in proper cases, because the statutes relied upon is unconstitutional, or was 'held invalid.'"

Having ruled that the statements subject matter of the criminal complaint for libel are privileged, and therefore not actionable, We find that the speedy, orderly and efficient administration of justice would be subserved by enjoining respondent Fiscal from further proceeding with the questioned preliminary investigation. Indeed, it would be a futile endeavor to conduct an investigation where no crime has been committed.

WHEREFORE, the petition for prohibition is hereby granted. Respondent Fiscal is permanently enjoined from conducting a preliminary investigation in I.S. No. 75-7624, which is hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Gutierrez, Jr., J., on leave.

[*] Kwong Sing vs. City of Manila, 41 Phil. 103 (1920); Gorospe vs. Penaflorida, 101 Phil. 886 (1957); University of the Philippines vs. City Fiscal of Quezon City, 2 SCRA 980; Tadeo vs. Provincial Fiscal, 4 SCRA 235; Grinen vs. Consolacion, 5 SCRA 722; Lava vs. Gonzales, 11 SCRA 650; People vs. Mencias, 18 SCRA 907; Ramos vs. Aquino, 39 SCRA 641.

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