

JOSE C. ZULUETA, PLAINTIFF AND APPELLANT, VS. NICANOR NICOLAS IN HIS CAPACITY AS PROVINCIAL FISCAL OF RIZAL, DEFENDANT AND APPELLEE.*G. R. No. L-8252. January 31, 1958*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7ec14944016c/>**REYES, A., J:**

This is an appeal taken by plaintiff from a decision of the Court of First Instance of Manila, dismissing his complaint for damages on the ground of lack of cause of action.

Plaintiff instituted the present action on May 19, 1954 against the defendant provincial fiscal of Rizal to recover moral and pecuniary damages in the sum of P10,000. The complaint in substance alleges that on May 6, 1954, the defendant fiscal conducted an investigation of a complaint for libel filed by herein plaintiff against the provincial governor of Rizal and the staff members of the Philippine Free Press; that after said investigation the fiscal "rendered an opinion" that there was no prima facie case; that the alleged libelous statements were made in good faith and for the sole purpose of serving the best interests of the public; and that in consequence the fiscal absolved the said governor and the Free Press staff from the crime of libel.

The only question for determination is whether plaintiff's complaint states a cause of action.

The present action is based on article 27 of the new Civil Code, which provides that "any person suffering material or moral loss because a public servant or employee refuses or neglects without just cause, to perform his official duty may file an action for damages and other relief against the latter." But as we said in *Bagalay vs. Ursal*,* 50 Off. Gaz. 4231, this article "contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty." Refusal of the fiscal to prosecute when after an investigation he finds no sufficient evidence to establish a prima facie case is not a refusal, without just cause, to perform an official duty. The fiscal has for sure the legal duty to prosecute crimes where there is enough evidence to justify such action. But it is equally his duty not to prosecute when after an investigation he has become convinced that the evidence available is not enough to establish a prima facie case. The fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a prima facie case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of the corresponding information and, having control of the prosecution of a criminal case, the fiscal cannot be subjected to dictation from the offended party (*People vs. Liggayu, et al.*, 97 Phil., 865, 51 Off. Gaz., 5644; *People vs. Natoza*, 100 Phil., 533, 53 Off. Gaz., 8099). Having legal cause to refrain from filing an information against the persons whom the herein plaintiff wants him to charge with libel, the defendant fiscal cannot be said to have refused or neglected without just cause to perform his official duty. On the contrary, it would appear that he performed it.

A contrary rule would be fraught with danger. Says the learned trial Judge on this point:

"Es altamente peligroso sentar un precedente judicial haciendo responsable por daños al Fiscal Provincial de Rizal, aqui demandado, por rehusar este de presentar querella si racionalmente y de buena fe, dicho Fiscal es o era de opinion en el ejercicio de su sana discrecion de que no existian motivos para presentar una querella; de

sentar este peligroso procedimiento o precedente judicial contra los tisciales seria poner a estos en una situacion que en el cumplimiento de su obligacion y en el ejercicio de su sana discrecion estuviesen siempre amenazados de una demanda civil si su opinion fuese contraria a la del denunciante, como una espada de Damocles pendiente en todo tiempo sobre sus cabezas. Si el denunciante en aquel asunto criminal de libelo, demandante en la presente causa, no estuviere conforme con la opinion o conclusion a que ha llegado el Fiscal Provincial de Rizal, demandado en esta causa, opinion o conclusion hecha con entera buena fe y en el ejercicio sano de sus facultades discrecionales, todavia queda al demandante otros recursos que nuestras leyes proveen para la proteccion o ejercicio de sus derechos."

It may not be amiss to state here that, as a general rule, a public prosecutor, being a quasi-judicial officer empowered to exercise discretion or judgment, is not personally liable for resulting injuries when acting within the scope of his authority, and in the line of his official duty. (42 Am. Jur. sec. 21 p. 256). As was said in the case of *Mendoza vs. De Leon* (33 Phil. 508, 513)—

"Nor are officers or agents of the Government charged with the performance of governmental duties which are in their nature legislative, or quasi judicial, liable for the consequences of their official acts, unless it be shown that they act willfully and maliciously, and with the express purpose of inflicting injury upon the plaintiff."

In view of the foregoing, the decision appealed from is affirmed, with costs against the appellant.

Paras, G. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

*95 Phil., 473.

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