

BENEDICTO E. ENERIO, COMPLAINANT, VS. JOVENCIO S. ORCULLO AND MIGUEL C. RELAMPAGOS, RESPONDENTS.

A.C. No. 1473. April 27, 1978

Ponente: SANTOS, J.

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SANTOS, J.:

This is a complaint[1] filed by Atty. Benedicto E. Enerio for Disbarment against City Fiscal Jovencio S. Orcullo and Asst. City Fiscal Miguel C. Relampagos of Tagbilaran City on May 27, 1975, alleging that respondents committed the following malicious, unlawful and unprofessional acts, to wit:

"1. The filing of two identical, groundless informations for libel against the herein complainant, docketed as Criminal Case Nos. 563 and 564, with the Court of First Instance of Bohol;

"2. Their malicious and false narration of facts in the said informations in alleging that the letters sent by the herein complainant to Acting Register of Deeds Bienvenida Sarce and Clerk of Court Teodoro Nazareno were 'open letters';

"3. Their malicious and false narration of facts in the said informations in alleging further that the herein complainant had caused the letters to be read by many persons."

Respondents filed their Joint Answer[2] on July 17, 1975 stating, *inter alia*, that --

"...sometime in December 1971, Bienvenida Sarce of the Office of the Register of Deeds of Bohol and Teodoro Nazareno, Clerk of Court of the Court of First Instance of Bohol, filed with the City Fiscal's Office of Tagbilaran City, criminal complaints, charging Benedicto E. Enerio for the crime of libel; that these two cases of libel against Benedicto E. Enerio were assigned to Assistant City Fiscal Miguel C. Relampagos for preliminary investigation; that the two cases, being of the same nature and against the same person, were jointly heard in the preliminary investigation; that after investigation and reinvestigation of the two libel cases, the Investigating Fiscal was convinced that there was established in evidence a reasonable ground to believe that Benedicto E. Enerio had committed the offense of Libel; that on August 4, 1972, the Investigating Fiscal issued a resolution recommending the filing of the corresponding information for Libel against Benedicto E. Enerio; that Assistant City Fiscal Miguel C. Relampagos prepared and signed two informations for Libel against Benedicto E. Enerio and, with the approval of the City Fiscal, Jovencio S. Orcullo, said two informations were filed on August 21, 1972 with the Court of First Instance of Bohol; that after several postponements, Benedicto E. Enerio was arraigned on November 14, 1972; that during the pendency of the case, Benedicto E. Enerio had presented several motions in court, such as Motion to Quash, Motion for Reconsideration, Motion for Deferment of Arraignment, etc. on the grounds, among others, that there were

irregularities committed by the Investigating Fiscal during the preliminary investigation and that he was denied due process of law; that all these motions were denied by the court for the reason that the preliminary investigations conducted by the City Fiscal's Office of Tagbilaran City in the two libel cases were conducted regularly and properly and proceeded in accordance with the provisions of Republic Act No. 5180 and that Benedicto E. Enerio was not denied due process during the preliminary investigations of the said two libel cases; that the two cases for libel were eventually dismissed by the Court on the basis of the affidavits of desistance executed by Bienvenida Sarce and Teodoro Nazareno, with Benedicto E. Enerio expressly consenting to the dismissal of said cases." [3]

On the basis of the Answer filed by respondents, the complainant preferred an additional or fourth charge, [4] alleging:

"x x x that respondent fiscals had again committed another falsehood or malpractice when they submit (sic) a document, Annex 'A', in their Answer - an alleged letter-complaint of Mrs. Bienvenida Sarce under oath dated December 22, 1971 as basis of their preliminary investigation and Information No. 563 for libel they filed against your complainant - because This Annex 'A' was really not submitted by Mrs. Bienvenida Sarce during the preliminary investigation conducted by respondents in December 1971."

The complaints were referred to the Solicitor General for investigation, report and recommendation on August 1, 1975. [5]

On February 28, 1977, the Solicitor General filed his Report and Recommendation, [6] pertinent portions of which follow:

"BRIEF STATEMENT OF FACTS:

"Sometime in December, 1971, Atty. Teodoro Nazareno, Clerk of Court of the Court of First Instance of Bohol and Bienvenida Sarce, then Acting Register of Deeds of Bohol, filed with the Office of the City Fiscal in Tagbilaran City, criminal complaints charging Benedicto E. Enerio (herein complainant) for the crime of libel. The preliminary investigation of the two complaints was conducted by Assistant City Fiscal Miguel C. Relampagos.

"On May 3, 1972, Assistant City Fiscal Miguel C. Relampagos issued a resolution dismissing the complaints for insufficiency of evidence (Exhibit 'N', p. 110, Rec.). The complainants, Atty. Teodoro Nazareno and Bienvenida Sarce, filed a Motion for Reconsideration to (sic) the resolution issued by Assistant City Fiscal Miguel C. Relampagos (Exhibit '3', p. 142, Rec.). Finding the Motion for Reconsideration to be meritorious, a re-hearing was conducted by Assistant City Fiscal Miguel C. Relampagos and on August 4, 1972, he issued a Resolution recommending the filing of an Information for Libel against Benedicto E. Enerio (Exhibit '6', p. 33, Rec.). On August 12, 1972, Benedicto E. Enerio filed a Motion for Reconsideration which was denied by Assistant City Fiscal Miguel C. Relampagos (Exhibit 'S' and 'T', p. 117, 120, Rec.)

"On August 21, 1972, City Fiscal Jovencio S. Orcullo and Assistant City Fiscal Miguel C. Relampagos filed two Informations for Libel against Benedicto E. Enerio with the Court of First Instance of Bohol (Exhibit '7' and '8', pp. 35, 36, Rec.). Upon arraignment, Benedicto E. Enerio entered a plea of not guilty (Exhibit '14', p. 154, Rec.). On May 26, 1973, Judge Victorino C. Teleron, provisionally dismissed the cases filed against

Benedicto E. Enerio upon motion of Assistant City Fiscal Miguel C. Relampagos and with the express consent of the accused himself, Benedicto E. Enerio, on the ground that the complainants had executed affidavits of desistance and that the prosecution witnesses had become hostile (Exhibit 'K', p. 103, Rec.)."

In the light of the Complaint and the Answer and of the antecedent findings of fact, the main thrust of the complaint is that the letters sent by the complainant to Atty. Teodoro Nazareno and Bienvenida Sarce were not libelous and were in the nature of privileged communications. The letters had been personally received by the addressees themselves, and it was not possible for others to have read the same. Therefore, the filing by the respondents of the information for libel against complainant, despite the aforementioned circumstances, constitutes malicious prosecution.

Upon the other hand, respondent Fiscals contend that the allegation that the letters sent by the complainant were privileged communications is a matter of defense, and that complainants had presented witnesses to show that other people had read the letters. Finally, they conducted the prosecution of the complaint in due course and as their duties required of them.

In resolving the foregoing contentions, the Solicitor General submits the following:

"The law makes it the duty of the prosecuting officers to file charges against whosoever the evidence may show to be responsible for an offense. It is not only the privilege but the sworn duty of the respondent City Fiscals, upon the filing of a complaint with his office charging a person with the commission of a criminal offense, to conduct an investigation thereof and subsequently file the corresponding information should the evidence presented to him sufficiently prove, in their opinion, that a criminal offense had been committed and that the party charged was probably guilty thereof. Needless to say, the determination of whether or not there is, as against any person, sufficient evidence of guilt to warrant his prosecution necessarily involves the exercise of discretion of the prosecuting officer. Thus, it was held in *Zulueta vs. Nicolas*, L-8252, 54 OG 6412, that:

'x x x. 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 (sic) 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.'

"It stands to reason that when a fiscal makes his ruling, the assumption must be that he does so on the basis of an honest appraisal of the evidence. Bad faith or malice cannot be imputed to the fiscal simply because the defendant or the complainant holds a different view.

"The first three charges relied upon by complainant Benedicto E. Enerio against the respondent City Fiscals are issues which involve the exercise of discretion of the latter. The finding of the respondents that the letters sent by the complainant to Teodoro Nazareno and Bienvenida Sarce were 'libelous', 'open letters' and 'that he caused the letters to be read by many persons', as alleged in the informations, were grounded upon facts gathered by them from their investigation. Of course, the truth of these facts has to be tested in the crucible of a full-dress trial on the merits.

"The purpose of this investigation is not to determine which of the two views, that of the complainant or that of the respondents, is to be believed. It is simply to determine whether the herein respondents, being quasi-judicial officers, had abused their discretion or had used the strong arm of the law in a vindictive and oppressive manner. Upon the facts alleged in the complaint and the evidence adduced by the complainant, it does not appear that the respondents had abused their discretion in filing the informations for libel against the herein complainant.

"It is also significant to note that the herein complainant had earlier filed charges for harassment and oppression against the respondents with the Department of Justice on basically the same facts obtaining at hand. The administrative charges filed against the respondents were dismissed subsequently by the President of the Philippines (Exhibit '24', p. 196, Rec.).

"The additional charge filed by Benedicto E. Enerio against the respondent pertains to the true date of the filing of the sworn letter-complaint of Bienvenida Sarce (Exhibit 'I' and 'HH', p. 29, 138, Rec.). The complainant claims that the said letter-complaint was made sometime in August or September of 1972 but the date of receipt by the City Fiscal's Office was backdated and was made to appear to have been filed on December 22, 1971 (p. 18, Memorandum). Complainant likewise claims that what Bienvenida Sarce filed with the Office of the City Fiscal on December 21, 1971, was an unsworn letter, unactionable for the purposes of commencing a preliminary investigation (Exhibit 'O', p. 113, Rec.).

"Respondents, on the other hand, alleged that when Assistant City Fiscal Miguel C. Relampagos received the letter of Bienvenida Sarce dated December 21, 1971 (Exhibit 'O'), the former advised the latter to submit a sworn letter, stating in detail her grounds for her complaint for libel. Hence, she filed her sworn letter dated December 22, 1971 (Exhibit 'I').

"The complainant, however, contradicts the claim of the respondents on the matter for two reasons: First, because the resolution of Assistant City Fiscal Miguel C. Relampagos dismissing the complaint filed by Bienvenida Sarce dated May 3, 1972 (Exhibit 'N', pp. 110-112, Rec.), mentions only the letter of Bienvenida Sarce dated December 21, 1971; and, second, in Exhibit 'HH' (p. 138, Rec.), the sworn letter of Bienvenida Sarce dated December 22, 1971, the notation '12-28-72' appears under the signature of Assistant City Fiscal Miguel C. Relampagos (pp. 18-20, Memorandum of Complainant).

"Assistant City Fiscal Miguel C. Relampagos explained that the letter he referred to in his resolution dismissing the complaint filed by Bienvenida Sarce was the one filed on December 22, 1971 (Exhibit 'N'). Thus, he testified on cross-examination, to wit:

'ATTY. ENERIO CONTINUES:

Q - Now, it is not a fact that on May 3, 1972 on or about five or six months after you have represented the Libel

complaints of Atty. Nazareno and Mrs. Sarce and showing to you a resolution marked as Exhibit 'N', is that your resolution?

A - Yes, sir.

Q - Now, your resolution it only speaks about this letter-complaint of Mrs. Sarce on the basis of preliminary investigation on December, 1971, is it not a fact?

A - Yes.

Q - Showing to you Exhibit 'N-1A' and also Exhibit 'A' of Mrs. Sarce's letter dated December, 1972, you gave that a due course?

A - This is the letter that I gave due course.

Q - But it was dated December, 1971?

A - Naturally, this is the substitute of the letter submitted there was a notation of Mrs. Sarce.

Q - Categorically, this Exhibit 'N-1A' does not refer to Exhibit 'O'?

A - It does not refer to Exhibit 'O' but subscribed letter complaint of Mrs. Sarce.'

(p. 412, Rec.)

"Regarding the notation under the signature of Assistant City Fiscal Miguel Relampagos appearing in the sworn letter-complaint of Bienvenida Sarce (Exhibit 'I' and 'HH'), it appears that the original letter-complaint bears the notation '12/28/71' while the xerox copy thereof was presented and marked as Exhibit 'HH' by the complainant bears the notation '12/28/72'. Between the original and the xerox copy, the former should prevail.

"In any event, the complainant had the opportunity and, in fact he questioned the regularity of the preliminary investigation in the Court of First Instance of Bohol before he was arraigned of the charges filed against him (Annex 'H', p. 188, Rec.). Subsequently, the lower court issued a resolution stating that . . .

'x x x it is the considered opinion of the court that the preliminary investigation conducted by the Office of the City Fiscal of Tagbilaran City in the above-entitled two cases upon the basis of which the corresponding informations were filed properly and regularly conducted and proceeded upon in accordance with the provisions No. 5180. Consequently, accused movant Atty. Benedicto E. Enerio, contrary to his representations as contained in his motion dated September 19, 1972, was not, therefore, denied due process during said preliminary investigation.'

(Exhibit '11', p. 39, Rec.; Italics supplied.)

"The complainant did not take any further step to bring the matter to the attention of the higher courts. He is forever deemed to have forfeited his right to question the regularity of the preliminary investigation." [7]

Finally, by way of conclusion and recommendation, the Solicitor General submits --

"CONCLUSION AND RECOMMENDATION

"From the evidence, it does not appear that respondents City Fiscals Jovencio S. Orcullo and Miguel C. Relampagos have committed acts which would warrant their suspension or removal as a member of the bar or of any other penalty upon them. It is therefore recommended that they be exonerated of the charges filed against them." [8]

It appears that instead of supporting the complainant's four (4) charges the records amply show that respondent fiscals proceeded judiciously and with due regard to complainant's rights as an individual charged with the commission of an offense; and that the informations were filed only after due and proper investigation. It also appears that the complainant had earlier filed charges "for harassment and oppression" against respondent fiscals with the Department of Justice on basically the same allegations, which had been dismissed earlier by the President of the Philippines; and that there had been efforts on the part of the complainant, during the trial, to show alleged irregularities committed by the investigating fiscals and that he had been denied due process of law, but these were found to be without merit, the trial court having found, instead that the investigations were "conducted regularly and properly and proceeded in accordance with Republic Act 5180."

It appears, that the complainant failed miserably to substantiate the four (4) charges he preferred in this administrative complaint against respondents fiscals. That the complainant who had been frustrated in his unsuccessful attempts to substantiate his charges--first with the Department of Justice and thereafter during the trial of the case--has little or no scruples in preferring complaints against fellow lawyers, which he cannot sustain and substantiate--a conduct which does not speak well of his regard for other members of his profession. Were it not then for the principles adhered to by this Tribunal that the filing of complaints as an aspect of the constitutional right to petition should not be unduly discouraged, it would seem that, in fairness to the respondents, the complainant should instead be held to answer for filing this unfounded complaint. For complaints of this nature not only add to the burdens of this Court already saddled with tremendous backlog of also cases, but also inflict undue and needless strain, if not harassment, on public officials also burdened with pressing responsibilities. The least then that can be done is to warn complainant to be more careful and circumspect in

preferring charges against fellow members of the Bar, and to refrain from filing charges already aired and found wanting in other proceedings, unless additional evidence so warrants.

WHEREFORE, finding the foregoing conclusion and recommendation well taken, the Complaint is hereby DISMISSED, and respondents are hereby exonerated from the charges filed against them. Let the dismissal of these charges be spread in their records. Atty. Benedicto E. Enerio, the complainant, is advised to be more circumspect in preferring complaints.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

Aquino, J., in the result.

[1] Rec., p. 3.

[2] Id., pp. 21-28.

[3] Id., pp. 64-66.

[4] Id., p. 75.

[5] Id., p. 58.

[6] Id., pp. 62-72.

[7] Id., pp. 67-72.

[8] Id., p. 72.

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