

THOMAS M. GONZALEZ, PLAINTIFF AND APPELLANT, VS. DEMETRIO B. ENCARNACION AND VENANCIO H. AQUINO, DEFENDANTS AND APPELLEES.

G.R. No. L-18726. August 31, 1966

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is an appeal by the plaintiff Thomas M. Gonzalez from the orders of January 25, 1961 and March 20, 1961 of the Court of First Instance of Cagayan in civil case 1147, dismissing his complaint for damages and denying his motion for reconsideration of the order of dismissal, respectively.

On September 6, 1960 Gonzalez filed with the aforesaid court a complaint to recover from Demetrio B. Encarnacion, a resident of Noveleta, Cavite, moral damages in the amount of P25,000 and exemplary or corrective damages as the court may deem just and proper, allegedly sustained by the former as a result of the filing by the latter in civil case N-151, entitled "Demetrio B. Encarnacion, plaintiff v. Thomas M. Gonzalez, defendant," of the Court of First Instance of Cavite, a pleading captioned "Reply and Answer to Counterclaim," containing words and expressions which are allegedly highly libelous, derogatory and scurrilous to "the personal worth, integrity, honor and reputation" of Gonzalez, as well as "impertinent, immaterial and irrelevant to the issues" in said civil case N-151."^[1] This complaint was amended on October 24, 1960 to include Venancio H. Aquino, Encarnacion's counsel, as co-defendant.

On September 28, 1960 Encarnacion filed a motion to dismiss the complaint upon the grounds that (1) it states no cause of action, and (2) venue is improperly laid^[2] and/or the trial court has no jurisdiction. The motion was denied by the court in its order of November 10, 1960. On November 21, 1960 Encarnacion moved to reconsider the order denying his motion to dismiss, insisting on his previous grounds.^[3] Meanwhile, Aquino also asked for the dismissal of the complaint on the very same grounds relied upon by Encarnacion.^[4]

On the basis of the aforesaid motion to reconsider and Aquino's motion to dismiss, the court in its order of January 25, 1961 reversed itself and dismissed the complaint, on the theory that under Republic Act 1289, "the court where the civil action for damages was first filed shall acquire jurisdiction to the exclusion of other courts such that the present action should have been brought in Cavite where Civil Case N-151 was originally instituted" "as a counterclaim in a supplemental pleading". As if to fortify the order of dismissal, the trial court issued its order of July 24, 1961, holding that "since the claim for damages arose from the reply and answer to the counterclaim filed in Civil Case No. N-151, the claim should be filed in the aforesaid case to avoid multiplicity of suits (Inciong, et al. v. Tolentino, L-10923, September 23, 1959, 56 O.G. p. 7618.)" Gonzalez' motion for reconsideration was denied. Hence this appeal.

Gonzalez takes the position that the venue of his complaint is not improperly laid because under article 360 of the Revised Penal Code, as amended by Republic Act 1289, effective June 15, 1955, a civil action for damages in cases of written defamation may be filed in the court of first instance of the province where the offended party

resides. On the other hand, the defendants contend that the complaint should have been filed in civil case N-151 of the Court of First Instance of Cavite because under the aforesaid provision of law the court where the criminal or civil action for damages is first filed acquires jurisdiction to the exclusion of other courts.

The resolution of the present appeal depends therefore on the proper interpretation of article 360 of the Revised Penal Code, which, as amended by Republic Act 1289, effective June 15, 1955, governs the matter of venue in this case. The said article, as amended, is quoted verbatim hereunder:

"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 pamphlet, or the editor or business manager of a daily newspaper, magazine, or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

"The criminal action and the civil action for damages in cases of written defamations as provided in this chapter, shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense: Provided, however, That where the libel is published, circulated, displayed, or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the Court of First Instance thereof: 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 to which have been filed in court at the time of the effectivity of this law.

"No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party."[5]

The legal issue raised in this appeal was squarely resolved by this Court in unmistakable terms, on the basis of essentially similar facts, in *Dizon vs. Encarnacion*, L-18615, December 24, 1963 . In that case, Amado M. Dizon,[6] a resident of Pampanga, filed a complaint in the Court of First Instance of Pampanga to recover from Demetrio B. Encarnacion[7] the aggregate sum of P50,000 by way of damages allegedly suffered by the former in consequence of the filing by the latter in special proceeding 2025, entitled "Intestate Estate of the Deceased Agustin M. Medina," of the Court of First Instance of Zambales, of a pleading captioned "Manifestation and Refutation," containing statements allegedly libelous and derogatory to the dignity, integrity and reputation of Dizon, as well as irrelevant to the issues in the said special proceeding. On the theory that Dizon's complaint should have been lodged with the Court of First Instance of Zambales in which the said "Manifestation and Refutation" had been filed, the trial court, upon motion of Encarnacion, dismissed the complaint, without prejudice to its renewal in the "proper court". After the denial of his motion for reconsideration Dizon appealed directly to this Court.

In upholding Dizon's contention that venue was not improperly laid and in repudiating the contrary view of the trial court, this Court, speaking through Mr. Justice Roberto Concepcion, now Chief Justice, made the following pronouncements:

"The language of the above quoted provision is, to our mind, plain and clear. It establishes a general rule and an exception thereto. Civil actions for damages in cases of written defamation 'shall' be filed with the court of first instance of the province or city in which 'any of the accused or any of the offended parties resides.' In other words, the plaintiff is limited in his choice of venue to the court of first instance of his residence or to that of any of the accused. Plaintiff may not file the action elsewhere, unless the libel is published, circulated,

displayed, or exhibited in a province or city wherein neither the offender nor the offended party resides in which case 'the civil and criminal actions may be brought in the court of first instance thereof.' The verb 'may' is permissive. Hence it does not necessarily imply a complete abrogation of the general rule laid down in the preceding sentence except in so far as it broadens the two (2) alternatives therein set forth, by giving the plaintiff a third choice of venue.

"Although the term 'may' should be taken as 'must' or 'shall', when the intention of the lawmaker to give thereto a mandatory or compulsory meaning is patent or manifest, no such intent appears insofar as the above provision is concerned. On the contrary, the use of the word 'may' in the second sentence thereof, when contrasted with the term 'shall' in the first, clearly suggests that Congress meant the second sentence to be merely permissive, not mandatory. Indeed, when the libelous imputation has not been published or circulated in the locality wherein either of the parties resides, the offended party may not wish to initiate the action therein, for the same would have the effect of giving additional publicity to the derogatory statements made by the defendant or defendants, and of increasing the harm already caused to the complainant. As a consequence, he 'may' prefer to file suit where the libel had actually been published or circulated. Hence, the provision to this effect has been established in our opinion, for his benefit, which he may waive." (emphasis ours)

Further discussion is needless to demonstrate that *Dizon vs. Encarnacion* controls the present case on all fours.

Inciong vs. Tolentino, supra, can have no application. The facts in that case are widely disparate from those obtaining here.[8] Moreover, this Court upheld the dismissal by the trial court of the complaint in *Inciong* on the ground of prescription,[9] which aspect is absent in this case.

ACCORDINGLY, the orders appealed from are set aside, and this case is hereby remanded to the court a quo for further proceedings in accordance with law. No pronouncement as to costs.

Concepcion, C.J., Reyes, JBL, Barrera, Dizon, Makalintal, Bengzon, JP, Zaldivar, and Sanchez, JJ., concur.
Regala, J., no part.

[1] The allegedly libelous words and expressions, quoted from Mr. Justice Gregorio Perfecto's concurring opinion in "*In Re: Vicente Sotto, For Contempt of Court*", January 21, 1949, published in *The Lawyers' Journal* of Feb. 28, 1949, are the following:

"(This party) appears to belong to the class of individuals who have no compunction to resort to falsehood or falsehoods, x x x as part of their systematic campaign of falsehoods, and slanders directed against us, is an imposture that only ignorants, blackhands and other mental pachyderms (like him) can swallow.

"x x x defendant was the impertinent assaulter of plaintiff's reputation, the malefactor who concocted the preposterous and malicious insinuations against the plaintiff, so that defendant has no feelings, if at all, to be wounded; x x x"

[2] Art. 360 of the Revised Penal Code, as amended by Republic Act 1289, was relied upon by movant.

[3] Movant filed a Supplemental Motion on Jan. 4, 1961, citing *Inciong v. Tolentino*, G.R. No. L-10923, September 23, 1959, 56 O.G. No. 50, p. 7618, to support his ground of improper venue.

[4] Aquino filed on Dec. 1, 1960 a motion to dismiss the complaint on the grounds of (1) improper venue and (2) lack of a cause of action.

[5] Art. 360, R.P.C., was further amended by Republic Act 4363, effective June 19, 1965, 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 pamphlet, or the editor, or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same 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 to which have been filed in court at the time of the effectivity of this law.

"Preliminary investigation of criminal actions for written defamations as provided for in the chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such actions may be instituted in accordance with the provisions of this article.

"No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de officio shall be brought except at the instance of and upon complaint expressly filed by the offended party."

The amendments effected by Republic Act 4363 have no relevance to the present case.

[6] Apparently the same A. M. Dizon, counsel for herein plaintiff Gonzalez.

[7] Apparently the same Demetrio B. Encarnacion, the principal defendant herein.

[8] In *Inciong vs. Tolentino*, Miguel Tolentino filed an action in the Court of First Instance of Manila against Ceferino Inciong and his wife to recover damages for a libel committed by Inciong and of which he was found guilty in a criminal case filed against him. This action was dismissed on the ground of improper venue. Tolentino refiled the case in the Court of First Instance of Batangas where Inciong was residing. Inciong filed his answer with damages based on the general allegation that Tolentino's baseless complaint contained certain false allegations. Not content with his counterclaim for damages, Inciong filed a separate action in the same court to recover damages on account of substantially the same alleged false and libelous allegations. In upholding the dismissal of the separate action filed by Inciong, this Court said:

"As stated by the court below, Tolentino's complaint for damages in Civil Case No. 256 is 'more or less a reproduction' of the complaint in Civil Case No. 17722, which, as insisted on by appellant, is the basis of their complaint for damages, except that Concepcion G. Inciong was dropped as party defendant and the allegation that she and her husband owned real and personal properties 'forming part and parcel of their conjugal property including the income from Samahang Magbubukid' omitted in the later case. Since Ceferino Inciong as defendant in Civil Case No. 256 has already filed an answer to the complaint in that case with counterclaim because of the alleged libelous and false allegations therein, which as already seen are the same allegations contained in the complaint in Civil Case No. 17722, it is apparent that to allow the present action to continue would only encourage a multiplicity of suits. The argument that Concepcion G. Inciong not having been

included as party defendant in Civil Case No. 256 could not file any counterclaim therein does not preclude the dismissal of the complaint in the present case. As pointed out by appellee, it is difficult to see how the allegation in the first complaint, which was omitted in the refiled case and which is simply an allegation of ownership of conjugal property, could validly constitute a cause of action for damages."

[9] In upholding the dismissal on the ground of prescription, this Court said:

"In any event, the order of dismissal must be upheld on the basis of prescription, one of the grounds set up by defendant Tolentino in support of his motion below to dismiss the complaint. As held in the recent case of *Tejuco vs. E.R. Squibb & Son Phil. Corp. et al.* (G.R. No. L-11052, Apr. 30, 1958), a civil action arising from libel prescribes in one year. In the present case, it appears that more than one year had elapsed from the filing of the alleged libelous complaint in Civil Case No. 17722 on October 8, 1952, copy of which was received by appellants thereafter, to May 24, 1954 when the present action was instituted."

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