

**BAGUIO COUNTRY CLUB CORPORATION REPRESENTED HEREIN BY
ANTHONY DE LEON, PETITIONER, VS. THE DEPARTMENT OF
JUSTICE, VICTOR C. AGUSTIN, ISAGANI YAMBOT, LETTY
JIMENEZ-MAGSANOC, RAMO...**

Ponente: REYES, J.

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REYES, J.:

This is an original action for certiorari seeking the nullification and setting aside of the resolution of the Department of Justice dated April 25, 2002 which sustained the city prosecutor's dismissal of a libel complaint against the respondents herein (Rollo, p. 28).

Similarly assailed is the order of the same respondent Department dated September 7, 2005 which denied petitioner's motion for reconsideration (Id., p. 30).

The facts of the case are as follows:

On the May 10 and 12, 2000 issues of the Philippine Daily Inquirer, respondent Victor Agustin wrote in his column "Cocktales" two articles respectively entitled "Tax Evasion 101b" and "Roco's Partner".

Believing the said articles to be libelous and detrimental to the good reputation of Baguio Country Club Corporation, Atty. Potenciano Ilusorio in his capacity as chairman of the Board, and Maximo Ilusorio, also a member of the board of directors of the said corporation, instituted a complaint for libel against the respondent columnist. Similarly impleaded were Isagani Yambot, publisher of the Inquirer, Letty Jimenez-Magsanoc, the editor-in-chief, and Ramon Ilusorio who used to be connected with the Baguio Country Club.

In its complaint, petitioner Baguio Country Club claims that the two articles contained libelous remarks that tend to malign its good name. Petitioner Baguio Country Club claims that the May 10, 2000 column of "Cocktales" in the Inquirer made it appear that it engaged or participated in an alleged tax evasion scheme relative to the acquisition of a highly coveted Greenhills property formerly owned by the late president Ferdinand Marcos. The imputation is allegedly clear from the following remark:

"Tax Evasion 101b

EVERY known crooked trick in the book has apparently been resorted to in order to hide the ownership and evade paying taxes on the Ferdinand Marcos-Dovie Beams love nest in Greenhills, this a crack team formed by BIR Commissioner Dakila Fonacier has unraveled.

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The BIR has also established that a Manila-based Baguio Country Club secretary, Adelina Soneja, actually signed herself as Maria vda. De Leon in the first deed of sale.

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Tightening the Nose

The BIR sleuthing has given them the added bonus in that they discovered that the other half of the Marcos-Dovie Beams property, 486 Northwestern, which is under the name of the corporation, has not been filing corporate reports with the Securities and Exchange Commission and the BIR.” (Id., p. 137)

With respect to the May 12, 2000 column of respondent Agustin, the following remarks were alleged to be scurrilous and defamatory:

“Roco’s Partner

If you will recall our ‘Tax Evasion 101’ series, Cocktales reported that the Marcos-Dovie Beams love nest at 488 Northwest St. in East Greenhills had been fraudulently transferred to Mr. De Leon, who only after four months, turned around and fraudulently transferred the same.

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We also reported that the sale papers of the Greenhills property had been processed by the Manila-based personnel of the Baguio Country Club and that the lease payments to the Greenhills house had also been sent by tenants also to the same Ramon Magsaysay Center Office of the Baguio Country Club.

We also reported that the President of Baguio Country Club, Federico Agcaoili, is the president of the corporation that owns the other half of the Marcos-Dovie Beams property, 486 Northwestern.

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We are even disposed to make life easier for them –we are prepared to plead guilty to all the libel charges and, on top of that, we even promise to stop writing about this and other related issues provided, here’s our condition, they present to the BIR and the courts the real Maria de Leon, the maid, not the Ilocos bus company.

Erap’s doctor

PRESIDENT Estrada’s eye doctor, the Boston-based Felipe Tolentino, had been thrown out of the Ramon Magsaysay Center after the poor doctor was caught in between a messy intra-corporate dispute that also involves the Baguio Country Club.

Cooked in his own goose

WAY before he got entangled in the Marcos-Dovie Beams tax-dodging scheme, the GM of the Baguio Country Club, Anthony de Leon, apparently had had a history of cooking up personal documents as well.

The 35 year old de Leon claimed in his 201 file with the Baguio Country Club that he obtained a BS Hotel and Restaurant Management degree from the University of Sto. Tomas in 1985.

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We checked and confirmed with UST that Anthony de Leon never finished any HRM degree simply because he was enrolled in a Tourism course, an entirely different discipline.

Worse, he never finished the course and is said to still owe Santo Tomas P100+ in unpaid fees since he dropped out of the Catholic university in 1983.” (Id., p. 138)

In sum, petitioner Baguio Country Club claims that the said malicious and public imputations of the crimes of tax evasion, forgery, trickery and other vices, defects and improper acts contained in the said newspaper articles have sullied its reputation.

In due course, all the respondents submitted their respective counter-affidavits.

Respondent Victor Agustin denied having maligned the Baguio Country Club in his two articles published in the

Inquirer. He asserted that while the name of Baguio Country Club was mentioned several times in the “Tax Evasion 101b”, its mention was made merely to describe Anthony de Leon as the acting manager of BBC, Adelina Soneza as the Manila-based Secretary of BBC and Federico Agcaoili as the president of BBC and nothing more. He further averred that there is nothing libelous about his second article, “Roco’s Partner”. (Id., pp. 46 to 63)

Respondents Letty Jimenez-Magsanoc and Isagani Yambot adopted respondent Agustin’s counter-affidavit (Id., p. 64). For his part, respondent Ramon Ilusorio submitted, in lieu of a counter-affidavit, a Motion to Dismiss (Id., p. 26).

On 25 August 2000, petitioner Baguio Country Club through Potenciano I. Ilusorio and Maximo K. Ilusorio filed its Reply-Affidavit (Id., pp. 65 to 70).

After the conduct of the preliminary investigation, the City Prosecutor of Baguio City dismissed, via a resolution dated September 18, 2000, the complaint filed by herein petitioner Baguio Country Club for lack of probable cause (Rollo, pp. 71-74). The said petitioner moved for reconsideration, to no avail (Id., pp. 75-84; p. 85).

Undaunted, the petitioner Baguio Country Club elevated the adverse order of the City Prosecutor of Baguio City before the Office of the Regional State Prosecutor of La Union by way of a petition for review. (Id., pp. 86-101)

Pursuant to Department Order No. 70-A dated July 10, 2000, the Regional State Prosecutor endorsed Baguio Country Club’s petition for review to the Assistant Chief State Prosecutor of the Department of Justice. (Id., p. 5 paragraph 11)

On April 25, 2002, the Department of Justice, through then Undersecretary Merceditas Gutierrez issued the now assailed resolution which denied the Baguio Country Club’s petition for review. (Id., pp. 24 to 29)

On May 15, 2002, the petitioner filed a motion for reconsideration with respect to the DOJ resolution. By way of an order dated September 7, 2005, the DOJ stood pat on its previous ruling. (Id., pp. 33 to 40; pp. 30 to 32)

Hence, this petition.

In soliciting a reversal, the petitioner argues on the following arguments:

I.

WITH ALL DUE RESPECT, THE DOJ COMMITTED MANIFEST ERROR AND/OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING BBC’S PETITION DESPITE CLEAR AND CONVINCING EVIDENCE WHICH SHOW THAT RESPONDENTS HAD SEVERELY BESMIRCHED THE REPUTATION OF BAGUIO COUNTRY CLUB THROUGH THE SCURRILOUS PUBLICATIONS IN QUESTION.

II.

WITH ALL DUE RESPECT, THE DOJ COMMITTED MANIFEST ERROR AND/OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT BAGUIO COUNTRY CLUB WAS NOT MALIGNED INASMUCH AS “THE MENTION OF BCC IN THE SUBJECT ARTICLES IS JUST DESCRIPTIVE OF THE PERSONS AND TRANSACTIONS” REFERRED TO IN THE ARTICLES. (Id., p. 9)

We abridge the assigned errors thus: Is the City Prosecutor of Baguio’s (as sustained by the reviewing Department of Justice) ruling out of probable cause for libel against respondent columnist Agustin, as well as the publisher and editor-in-chief of Philippine Daily Inquirer, as regards the two subject articles constitutive of grave

abuse of discretion.

The query invites a negative answer.

After going through the remarks allegedly defamatory against the petitioner Baguio Country Club, we are convinced that the public respondents' failure to lodge a criminal information on the basis of the said articles is not marred by whim, caprice or personal antagonism. Instead, it was borne by the public respondent's guileless conviction that the allegedly malicious remarks was not, in fact, directed against the petitioner. Nothing in the said articles insinuated that the petitioner Baguio Country Club, as a separate juridical entity, was a privy to such anomalous transactions. Indeed, the mention of Baguio Country Club in the said articles is merely "incidental" and, we are poised to agree, "descriptive" of the personalities mentioned in the article. In fact, even supposing that certain remarks were indeed damaging on the part of these personalities who are, admittedly, closely associated with the Baguio Country Club, this does not give the latter the license to bring the matter to court in behalf of these persons. In relation to the people that control it or are closely linked to it, Baguio Country Club is a different person altogether.

As the Department of Justice has aptly ruled on the matter:

"The argument of complainant that it was maligned does not find merit in the factual circumstances of the case. A careful perusal of the alleged scurrilous remarks does not show any imputation of a criminal act, or a vice, or defect that tends to cause dishonor either against BBC as a juridical entity, or to the natural persons named therein. The articles do not also state that the persons identified have acted for and in behalf of the of the BBC. On the contrary, they constitute just and constructive writing on matters of public interest. As such, public policy demands that the protective mantle of privilege communication be extended to cover full disclosure of public affairs. It is thus, constitutionally protected. In the recent case of Borjal vs. CA (301 SCRA 1), the Supreme Court has expressly ruled that "xxx To be sure, the enumeration under Article 345 is not exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged xxx." It has also repeatedly held that privileged communications should not be subjected to microscopic examination to discover grounds of malice or falsity (US vs. Bustos, 137 Phil. 731).

In the instant case, the alleged scurrilous columns merely chronicled the events that attended the series of transactions of the Dovie Beams house at a ludicrously low price and the consequential effects on public revenues. Evidence shows that BBC was never mentioned as privy to the transactions. Rather, the parties referred to are private individuals who acted in their personal capacities.

In "Tax Evasion 101b", the following, among others, appear: "Manila-based Baguio Country Club Secretary, Adelina Soneja", and in "Roco's Partner", pertinent portions read: "Greenhills property had been processed by the Manila-based personnel of Baguio Country Club and that the lease payments to the Greenhills house had also been sent by tenants also to the same Ramon Magsaysay Center Office of the Baguio country Club", "messy intra-corporate dispute that also involves the Baguio Country Clun" and "De Leon claimed in his 210 with the Baguio Country Club".

The commentaries did not state that the persons mentioned therein acted for and in behalf of the BBC. The mention of BBC in the articles is just descriptive of the persons in the transactions.

It has to be emphasized that the Philippine Daily Inquirer is engaged in the performance of a public duty to express opinions on dubious transactions that tend to violate existing tax laws as in the instant case. It has been held that newspapers should be given leeway and tolerance in order for them to effectively perform their role in democracy and should not be held to account to a point of suppression for honest mistakes or imperfections in the choice of words (Quisumbing vs. Lopez, 96 Phil. 510). The title "Tax Evasion101b" is but a mere "rhetorical hyperbole" or a writer's exaggeration of expression which, if made without malice, does not fall within the purview of the crime of libel. The privileged nature of the assailed commentaries destroys the

presumption of malice (Article 354, Revised Penal Code). (DOJ Resolution, Id., pp. 27-28)

It should be stressed that the law requires fiscals to be constantly discerning in the exercise of their prosecutorial powers. One should observe abundant caution in wielding the ability to inconvenience and harass individuals by hurling them to court. As reality would painfully teach us, litigation, specially the protracted kind, is a tormenting penalty in itself.

As explained by the High Court, it is imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons. The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. (*Salonga v. Cruz Paño*, 134 SCRA 438, 462 (1985); *Roberts, Jr. v. Court of Appeals*, 254 SCRA 307 (1996).

As regards malice as a necessary ingredient of libel, it connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive and is the essence of the crime of libel (*Potts vs. Dies*, 132 Fed 734, 735 and *Rice vs. Simmons*, Del 2 Har. 309, 310 as cited in *Borjal vs. Court of Appeals*, G.R. No. 126466, January 14, 1999).

In this case, respondent Agustin as well as his publisher and editor could not be said to have written and published the subject articles just for the heck of it. Rather, they were prompted by the distinct responsibility innate among those who work in the media. Indeed, the respondents' zeal as in performing a civic duty should not be mistaken for malice, lest fear of prosecution should mumm the lips of truth and public opinion.

Indeed, as decreed by the High Court, fair commentaries on matters of public interest are jurisprudentially deemed as privileged communication (*Borjal vs. Court of Appeals*, G.R. No. 126466, January 14, 1999).

Withal, it ought to be stressed that certiorari is an exceptional remedy (*Morales vs. Court of Appeals*, 285 SCRA 337). For this writ to lie, mere abuse of discretion is not enough. (*Santos v. Commission on Elections*, G.R. No. 155618, March 26, 2003, 399 SCRA 611). It is imperative to show clearly that there is patent and gross abuse of discretion as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility (*Ala-Martin vs. Sultan*, 366 SCRA 316).

After a conscientious perusal of the records, this court failed to see any grave exercise of discretion on the part of the public respondent. That said, it behooves this court to sustain its determination of the existence, or in this case, the nonexistence of probable cause.

Incidentally, it did not escape our attention that the petitioner's arguments are anchored on the supposedly mistaken judgment of the investigating prosecutor, and not on a mistaken jurisdiction. It is well settled that factual issues are not a proper subject for certiorari which is limited to the issue of jurisdiction (*Negros Oriental Electric Cooperative 1 vs. Secretary of the DOLE*, 357 SCRA 668).

WHEREFORE, in the light of the premises above conveyed, the present petition is hereby DISMISSED.

SO ORDERED.

Reyes, Jr. and Lanzas, JJ., concur.

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