

TERTULIANO ABEJARON, PETITIONER, VS. COURT OF APPEALS, (TWELFTH DIVISION) AND PEPSI COLA BOTTLING CO., INC., RESPONDENTS.

G.R. No. 101767. May 08, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

In 1978, petitioner Tertuliano Abejaron was employed by private respondent Pepsi Cola Bottling Co., Inc. as a salesman.

In May 1980, Pepsi suspended him without pay for an alleged unremitted collection of P67,945.70. A complaint for estafa was also filed against him with the Provincial Fiscal of General Santos but this was subsequently dismissed for lack of sufficient evidence.

Abejaron was reinstated on November 11, 1980, but in November 1982, he was served a warning on a second charge that he had incurred questionable route shortages and had repeatedly failed and refused to remit his daily collections. He was "grounded" pending investigation of this matter.

In 1983, Pepsi filed another complaint for estafa against Abejaron with the City Fiscal of General Santos City. This time the corresponding information was filed with the Regional Trial Court of General Santos City and docketed as Criminal Case No. 3067.[1]

On August 29, 1986, the trial court acquitted Abejaron of the crime charged.[2] Nevertheless, Abejaron was eventually separated by Pepsi on March 21, 1983.

Abejaron never filed any complaint with the Labor Department when he was suspended in 1980 and when he was dismissed in 1983. Instead, he sued Pepsi for damages on November 24, 1986, for what he called the malicious filing of the estafa charge against him. This complaint was docketed as Civil Case No. 3475 in the Regional Trial Court of General Santos City.

On April 25, 1989, Judge Manuel Luis S. Gumban rendered a decision holding Pepsi liable for all the awards prayed for in the complaint, to wit, P50,000 as actual damages, P65,317.87 as actual or compensatory damages, P35,000 as attorney's fees, P200,000 as moral damages, and litigation expenses.[3]

In its appeal to the respondent court, Pepsi raised for the first time the sole issue of lack of jurisdiction of the trial court over the case. It maintained that as the complaint was essentially a monetary claim arising from an employer-employee relationship, jurisdiction was vested thereover in the Labor Arbiter.

The respondent court rejected this contention thus:

A cursory reading of the complaint filed by the appellee indubitably shows no trace of any fact tending to establish that the same was based on the illegal termination from office of herein appellee. Conversely, a scrutiny of the complaint reveals that the same was apparently filed to recover damages on the basis of the

alleged malicious prosecution and its consequence on the part of the appellee.

The Court has carefully examined the allegations in the complaint and holds that the above pronouncement is correct. The respondent court did not err in ruling that the case came under the jurisdiction of the Regional Trial Court and not of the Labor Arbiter.

In *Honiron Philippines, Inc., et al. v. Intermediate Appellate Court*,^[4] this Court declared:

Mendiola's action is founded essentially on "the highly malicious and grossly wanton acts and omission" of defendants. Specifically, the administrative services manager's act of filing a complaint for frustrated qualified theft against him out of personal resentment, the personnel manager's false, malicious and slanderous imputation of the crime of theft against him leading to the termination by Honiron of his services without clearance and while the case was still being investigated by the police, and Honiron's insistence on prosecuting him for the alleged crime. The complaint was not anchored on the termination of Mendiola's services per se, but rather on the manner and consequent effects of such termination.

Mendiola's complaint being based on alleged violations of Civil Code provisions instead of the Labor Code, his action is basically a civil dispute cognizable by the regular courts.

A more exhaustive discussion of this same issue is found in the case of *Pepsi Cola Distributors of the Philippines, Inc. v. Gal-lang*,^[5] where, after referring to the cases of *Medina vs. Castro-Bartolome*,^[6] *Singapore Airlines, Ltd., vs. Paño*,^[7] *Molave Motor Sales, Inc. vs. Laron*,^[8] *Quisaba vs. Sta. Ines Melale Veneer and Plywood, Inc.*^[9] and *San Miguel Corporation vs. NLRC*,^[10] we held as follows:

The case now before the Court involves a complaint for damages for malicious prosecution which was filed with the Regional Trial Court of Leyte by the employees of the defendant company. It does not appear that there is a "reasonable causal connection" between the complaint and the relations of the parties as employer and employees. The complaint did not arise from such relations and in fact could have arisen independently of an employment relationship between the parties. No such relationship or any unfair labor practice is asserted. What the employees are alleging is that the petitioners acted with bad faith when they filed the criminal complaint which the Municipal Trial Court said was intended "to harass the poor employees" and the dismissal of which was affirmed by the Provincial Prosecutor "for lack of evidence to establish even a slightest probability that all the respondents herein have committed the crime imputed against them." This is a matter which the labor arbiter has no competence to resolve as the applicable law is not the Labor Code but the Revised Penal Code.

Significantly, Pepsi questioned the lack of jurisdiction of the trial court for the first time only on appeal to the respondent court. While it is true that the question of jurisdiction may be raised at any time, there does not seem to be any reason why the private respondent did not invoke the issue earlier.

What it should have done when the complaint was filed in the Regional Trial Court was move for its dismissal on the ground of lack of jurisdiction over the subject-matter. If the motion was denied, it could have come to this Court directly in a special civil action for certiorari alleging the same ground. Pepsi did neither of these. Instead, it willingly proceeded to trial, saying naught a word about the issue of jurisdiction. Later, when the trial court rendered judgment against it, it went to the Court of Appeals in an ordinary appeal under Rule 41 rather than directly to this Court under Rule 65.

The petitioner now contends that as the appeal was based on the sole issue of jurisdiction, Pepsi sought the wrong remedy in going to the Court of Appeals. Hence, upon receipt of its petition for review, the Court of Appeals should have certified it to this Court on the ground that it involved a pure question of law which it had no authority to resolve.

True enough. But the trouble is that the petitioner did not interpose any serious opposition when the Court of Appeals entertained the appeal and thereafter resolved it. The petitioner spiritedly debated the issue of jurisdiction with the private respondent before the respondent court as if there was nothing amiss. He did not ask the respondent court to certify the case to us. The petitioner was almost casual when he mentioned the procedural flaw and did not choose to pursue it with vigor, as he should have. By his omission to fault an obvious error and his active participation in the proceedings in the respondent court, he is now estopped from raising this objection at this late hour.

At any rate, the result would have been the same if the case had been referred to us by the Court of Appeals. Following the cases above cited, we would also have held that the petitioner's claim for damages was within the jurisdiction of the Regional Trial Court and not the Labor Arbiter.

The respondent court did not stop with its ruling on the issue of jurisdiction. Although not assigned as an error, the award to Abejaron was discussed and modified by it after finding that there was no convincing and preponderant evidence to prove malice on the part of Pepsi when it charged Abejaron with estafa.

The respondent court thus held:

WHEREFORE, the decision appealed from dated April 25, 1989, is hereby REVERSED, and SET ASIDE and a new one is entered absolving herein appellant Pepsi Cola Bottling Co., Inc. from paying damages to the appellee. No costs.

The petitioner claims that the respondent could not rule upon the propriety of the award of damages because it had not been assigned as an error by the appellant. He cites Rule 51, Sec. 7 of the Rules of Court, reading as follows:

Sec. 7. Questions that may be decided. ? No error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court, at its option, may notice plain errors not specified, and also clerical errors.

There is more than meets the eye here. The above provision should not be read in the restrictive manner the petitioner suggests.

Interpreting this rule in *Vda. de Javellana v. Court of Appeals*,^[11] this Court held:

The general rule is that only errors which have been stated in the assignment of errors and properly argued in the brief will be considered, except errors affecting jurisdiction over the subject-matter and plain, as well as clerical, errors.

But while the petitioner Javellana did not assign as error the failure of the trial court to adjudge recovery and to award damages, we feel that there is sufficient justification to set aside the judgment in this respect. For the error is patent. Under Sec. 7, Rule 51 of the Revised Rules of Court, the Court of Appeals is given an option to consider and pass upon a proven error notwithstanding the fact that it was not specifically assigned and argued in the brief.

Besides, an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error. (*Hernandez vs. Andal*, 78 Phil. 196).

At any rate, the Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case (*Ortigas vs. Lufthansa German Airlines*, 64 SCRA 610).

A similar pronouncement was made in *Baquiran vs. Court of Appeals*,^[12] to wit:

Issues, though not specifically raised in the pleadings in the appellate court, may, in the interest of justice, be properly considered by said court in deciding a case, if they are questions raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore(d).

This was an affirmation of the earlier case of *Hernandez vs. Andal*,^[13] where we held:

While an assignment of error which is required by law or rule of court has been held essential to appellate review, and only those assigned will be considered, there are a number of cases which appear to accord to the appellate court a broad discretionary power to waive this lack of proper assignment of errors and consider errors not assigned.

Accordingly, we hold that the respondent court was justified in ruling on the award of damages even if the issue was not assigned as an error when the decision of the trial court was appealed. Consideration of this question was necessary to the just and complete resolution of the case before it. There was enough in the record elevated to the respondent court to enable it to reach its own conclusion on this particular matter.

This Court has also examined the evidence of the parties and agrees that the filing of the charge for estafa by Pepsi against Abejaron was not made maliciously so as to entitle the petitioner to the relief he seeks. Pepsi cannot be faulted for suing on what it believed to be an actionable wrong even if the suit was eventually dismissed. Its good faith not having been successfully assailed, it cannot for this reason be held liable in the damages alleged by the petitioner. The simple fact is that even if he did sustain them, he still could not be allowed to recover thereon for lack of a legal basis. In short, this is a case of *damnum absque injuria*.

WHEREFORE, the challenged decision is **AFFIRMED** and the petition is **DENIED**, without any pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Rollo, p. 77.

[2] *Ibid.*, pp. 64, 81.

[3] *Id.*, pp. 83-86.

[4] G. R. No. 66929, August 13, 1990.

[5] **201 SCRA 695.**

[6] **116 SCRA 597.**

[7] **122 SCRA 671.**

[8] **129 SCRA 719.**

[9] **58 SCRA 771.**

[10] 161 SCRA 719.

[11] 123 SCRA 799.

[12] 2 SCRA 873.

[13] 78 Phil. 96.

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