

FRANKLIN M. DRILON, AURELIO C. TRAMPE, FERDINAND R. ABESAMIS AND EULOGIO MANANQUIL, PETITIONERS, VS. COURT OF APPEALS, HON. ERIBERTO U. ROSARIO, JR., IN HIS CAPACITY AS PRESIDIN...

G.R. No. 106922. April 20, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review of the Decision[1] of the Court of Appeals and Resolution[2] dated June 29, 1992 and August 27, 1992 respectively which affirmed the Order[3] dated October 8, 1991 of the Regional Trial Court of Makati City, Branch 66, in Civil Case No. 90-2327 denying petitioners' motion to dismiss as well as the Order[4] dated January 6, 1992 denying petitioners' motion for reconsideration.

The facts are as follows:

After the unsuccessful December 1989 coup d' etat, the Department of Justice, then headed by petitioner Franklin Drilon, referred to the Special Composite Team of Prosecutors (Team of Prosecutors, for brevity), composed of co-petitioners Aurelio C. Trampe, Ferdinand R. Abesamis and Eulogio Mananquil, a letter-complaint from the National Bureau of Investigation (NBI, for brevity) requesting for the investigation of private respondent Juan Ponce Enrile for his alleged participation in the said coup attempt.

Finding sufficient basis to continue the inquiry, the Team of Prosecutors issued a subpoena to private respondent with an order to submit his counter-affidavit to the letter-complaint. Instead of filing his counter-affidavit, private respondent filed a Petition for Summary Dismissal of the charge against him. He also filed an urgent motion praying that he be given a notice of at least five (5) days before the filing of any information against him to enable him to take the appropriate legal action. At the same time, private respondent sent "cautionary letters" to all judges in Quezon City, Manila, Makati and Pasay City requesting that he be apprised of any information which may be filed against him and that he be given the opportunity to personally witness the raffle of the case against him. Said notice also appeared in several newspapers of general circulation.

On February 27, 1990, the Team of Prosecutors filed before the Regional Trial Court of Quezon City an Information charging private respondent with the complex crime of rebellion with murder and frustrated murder. The Team of Prosecutors likewise filed before the Regional Trial Court of Makati City an Information charging, among others, private respondent with the offense of obstruction of justice for harboring an alleged felon under Presidential Decree No. 1829. Private respondent was later arrested and detained overnight at the NBI headquarters in Taft Avenue, Manila, and, on the following day, transferred to a detention room at Camp Karingal in Quezon City. The lawyers of private respondent also discovered that the information against the latter was first filed on February 21, 1990, but was subsequently withdrawn for re-filing on February 27, 1990. After a petition for writ of habeas corpus was filed before this Court entitled *Enrile v. Salazar*[5], we granted private respondent's provisional liberty upon posting of a cash bond.

On June 5, 1990, in the same case of *Enrile v. Salazar*, we ordered the modification of the Information before the RTC of Quezon City to simple rebellion only in consonance with our ruling in *People v. Hernandez*[6]. On September 13, 1990, in *Enrile v. Amin*,[7] this Court ruled that the filing of a separate information for obstruction of justice also violated the *Hernandez* doctrine and accordingly ordered the quashal of the said information.

As a consequence of our said Order dated September 13, 1990, private respondent on August 20, 1990 filed a Complaint for damages, docketed as Civil Case No. 90-2327, before the Regional Trial Court of Makati City while the rebellion case was still pending litigation. Private respondent's complaint impleaded as defendants herein petitioners, then Solicitor General Francisco Chavez and Judge Jaime Salazar. The complaint basically accuses the petitioners of bad faith in filing the information for rebellion complexed with murder and frustrated murder. Thus, the complaint alleges:

2.5 The so-called "preliminary investigation" of the charge against plaintiff was railroaded from the very start. Plaintiff's pleas and motions asking for strict compliance with the rules of procedure and the norms of fairness and justice were either ignored or summarily denied by the investigating panel. Plaintiff, in utter frustration, filed a petition for summary dismissal of the charge and, anticipating the denial of that as well, also filed an urgent motion to be given at least five (5) days notice to enable him to take the appropriate legal action, before the filing of any information against him.

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3.1 All of the defendants, in and by all their actuations in connection with the information for rebellion "complexed"... individually, collectively, and with unity of purposes and intentions, illegally and unjustly caused, directed and prolonged plaintiff's arrest and detention without bail, through the expediency of disregarding the *Hernandez* doctrine prohibiting the complexing of rebellion with other crimes.

In and by all their aforementioned actuations, all of the defendants individually, collectively and with unity of purposes and intentions -

(a)

willfully, manifestly and maliciously obstructed, defeated, violated, impeded and impaired plaintiff's constitutional and legal right to due process, right to be secure in his person against unreasonable and unwarranted arrest, and right to bail, as enshrined in Sections 1, 2 and 13 of Article 14(1) of the Bill of Rights of the Constitution;

(b)

grossly abused their rights and violated their duties as citizens, as members of the legal profession, and as public officers;

(c)

willfully acted in contravention of the basic standards of good faith and justice; and

(d)

willfully acted in a manner contrary to law, morals and public policy

- all causing great suffering and injury to plaintiff.

3.2 Defendants Chavez, Drilon, Trampe, Abesamis and Mananquil knowingly, manifestly and maliciously abused and exceeded their duties and authority as public officials in charge of the enforcement and prosecution of laws,

as well as violated the tenets of good faith and justice in human relations, by directly and actively advocating and indulging in what these defendants had publicly admitted and described to be a "legal experimentation" consisting in the knowing disregard and defiance of the well-established Hernandez doctrine.

Defendant Drilon and his co-defendants Trampe, Abesamis and Mananquil, being the head and members, respectively, of the Department of Justice, by their above-alleged actuations, violated their principal responsibility, as legal counsel and prosecutors, to administer the criminal justice system in accordance with the established and accepted laws and processes.

Defendant Drilon, being the Secretary of Justice having supervision, control and direction over the actuations of co-defendants Trampe, Abesamis and Mananquil violated the tenets of good faith and justice in human relations and abused his official duties and authority, by, among others, expressly instigating, authorizing, ordering and causing the filing of the information for rebellion "complexed" against the plaintiff.

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3.3. Defendants Drilon, Trampe, Abesamis and Mananquil filed or caused the filing of the information for rebellion "complexed" with manifest bad faith, deception and duplicity, all in violation of the tenets of good faith and justice in human relations and in gross abuse of their duties and authority as public prosecutors "to see that justice is done." (Canon 6, Rule 6.01, Lawyers' Code of Professional Responsibility).

More particularly, these defendants originally filed or caused the filing of the information ...on 21 February 1990 but, for some mysterious reason, the information was subsequently withdrawn. The initial filing and withdrawal of the information - defendant Chavez admitted these facts during the Supreme Court hearing on 6 March 1990 - were done in total secrecy and without the knowledge of plaintiff who learned of this incident only after his arrest on 27 February 1990.

Likewise, on or about 27 February 1990, these defendants deliberately misled plaintiff and his lawyers and induced them to believe that the charge of rebellion "complexed" was set to be filed against the plaintiff in the Regional Trial Court of Makati. While plaintiff's attention was diverted to the Regional Trial Court of Makati, these defendants surreptitiously filed or caused the filing of main information for rebellion "complexed" in the Regional Trial Court of Quezon City.

All of the above-named defendants' actuations were meant to conceal from the public in general and the plaintiff and his counsel in particular, the filing of the information and to prevent plaintiff and his lawyers from witnessing the raffle and from questioning the irregularity of the assignment, the validity of the information, the authority of the court to issue the warrant of arrest, the obvious lack of probable cause, and, finally, to prevent plaintiff from posting bail.

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3.5 The defendants' unfounded and malicious persecution of plaintiff, calculated to malign the person and reputation of the plaintiff, a duly elected Senator of the country, has caused and continues to cause plaintiff extreme suffering, mental anguish, moral shock and social humiliation,...

3.6 The reckless and wanton conduct of the defendants who, as public officials, are supposed to be the guardians of the democratic institutions and civil liberties of citizens, in charging, taking cognizance of, and defending a non-existent crime, and in causing the harassment and persecution of the plaintiff, should be strongly condemned...[8] x x x

On October 9, 1990, the petitioners filed a Motion to Dismiss for failure of the Complaint to state a cause of action. They claimed that there was no allegation of any actionable wrong constituting a violation of any of the

legal rights of private respondent. In addition, they put up the defense of good faith and immunity from suit, to wit:

THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST DEFENDANTS IN THAT:

(A)

THE FILING OF THE INFORMATION AGAINST PLAINTIFF FOR THE CRIME OF REBELLION WITH MURDER AND FRUSTRATED MURDER WAS INITIATED IN THE HONEST BELIEF THAT IT COULD BE SUSTAINED UNDER THE FIRST PART OF ARTICLE 48 OF THE REVISED PENAL CODE; and

(B)

DEFENDANTS, ACTING IN GOOD FAITH, WITHOUT MALICE AND WITHIN THE SCOPE OF THEIR AUTHORITY, CANNOT BE HELD PERSONALLY LIABLE BY WAY OF DAMAGES FOR ANY ALLEGED INJURY SUFFERED BY PLAINTIFF.[9] On October 8, 1991, respondent trial court issued an Order denying the Motion to Dismiss and requiring petitioners to file their answer and to present evidence in support of their defenses in a full-blown trial inasmuch as the defense of good faith and immunity from suit does not appear to be indubitable.[10] Petitioners' motion for reconsideration was likewise denied.

Before the Court of Appeals, petitioner Trampe, in his own behalf and in behalf of his co-petitioners, filed a petition for certiorari under Rule 65 of the Revised Rules of Court alleging that the respondent court committed grave abuse of discretion in denying their motion to dismiss. On June 29, 1992, respondent appellate court dismissed the petition and the subsequent motion for reconsideration ruling, thus:

We cannot perceive how respondent court could have acted with grave abuse of discretion in denying the motion to dismiss. Before respondent court were two diametrically opposed contentions. Which to believe, respondent court is at a loss. Hence, respondent court had no alternative but to be circumspect in acting upon the motion to dismiss. This respondent court accomplished by requiring petitioners to file their answer where they can raise the failure of the complaint to state a cause of action as an affirmative defense. Indeed the better alternative would be to conduct a full blown trial during which the parties could present their respective evidences to prove their respective cause of action/defense.[11]

Hence, this instant petition.

In view of the appointment of petitioner Trampe to the judiciary, petitioner Abesamis filed a manifestation stating that he would act as counsel for his own behalf and in behalf of his co-petitioners. In a Resolution dated March 8, 1993, we granted the Manifestation of petitioner Abesamis to substitute for petitioner Trampe as counsel for himself and his co-petitioners. Respondent did not file a motion for reconsideration.

Meanwhile, on February 12, 1993, or almost three (3) years after the filing of the complaint for damages against petitioners, the Regional Trial Court of Makati dismissed with finality the rebellion charges against private respondent[12].

In their Memorandum,[13] petitioners raise the following assignment of errors:

I

THE RESPONDENT COURT HAS DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT BY HOLDING THAT THE RESPONDENT JUDGE DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION TO DISMISS FILED BY THE PETITIONERS AND THAT IN ANY EVENT, THE DENIAL OF A MOTION TO DISMISS IS NOT SUBJECT TO REVIEW BY CERTIORARI.

II

PETITIONER TRAMPE ACTED CORRECTLY IN REPRESENTING AND APPEARING ON BEHALF OF THE OTHER PETITIONERS IN THE INSTANT PETITION. MOREOVER, BY HIS LONG SILENCE AND INACTION, PRIVATE RESPONDENT CANNOT NOW QUESTION THE PERSONALITY OF PETITIONER TRAMPE TO REPRESENT AND APPEAR ON BEHALF OF THE OTHER PETITIONERS HEREIN.

Before ruling on the substance of the petition, let us first deal with the legal personalities of petitioners Trampe and Abesamis to represent themselves and the rest of the petitioners in the case at bar. Private respondent avers that Trampe's representation is a nullity for the reason that under the Revised Administrative Code, it is not the function of the Office of the Chief State Prosecutor to represent its prosecutors in suits that may be filed against them. Private respondent likewise argues that Trampe and Abesamis are prohibited from acting as private counsels for their co-petitioners inasmuch as it violates Republic Act No. 6713, the "Code of Conduct and Ethical Standards for Public Officials and Employees."

It must be noted that petitioner Abesamis filed a Manifestation[14] before this Court asking that he be permitted to replace petitioner Trampe as counsel for the petitioners in view of Trampe's appointment to the judiciary. No opposition thereto was filed by private respondent. Thus, we granted the manifestation of petitioner Abesamis to substitute for Trampe as counsel for and in behalf of himself and his co-petitioners. There being no motion for reconsideration filed by private respondent, said resolution has become final. Private respondent did not dispute the legal personality of petitioner Trampe to represent himself and his co-petitioners in his Comment[15] filed before the Court of Appeals. Private respondent belatedly raised this contention in his opposition[16] to the motion for reconsideration of the appellate court's decision. Accordingly, private respondent is estopped and legally barred from questioning the representation of petitioners Trampe and later, Abesamis to act as counsel for themselves and their co-petitioners in this case.

Going now to the crux of the petition, petitioners contend that the complaint sets forth no cause of action against them. They allege good faith, regularity in the performance of official duties and lack of ultimate facts constituting an actionable wrong. On the other hand, private respondent argues that a cause of action has been sufficiently pleaded and that the defenses of good faith and performance of official duties are best disposed in a judicial hearing. Private respondent likewise maintains that the defense of good faith is irrelevant for the reason that the petitioners are sued under Article 32 of the New Civil Code where the defense of good faith is irrelevant.

We find merit in the petition.

A cause of action is the act or omission by which a party violates a right of another.[17] A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[18] The remedy of a party whenever the complaint does not allege a cause of action is to set up this defense in a motion to dismiss or in the answer. A motion to dismiss on the ground of failure to state a cause of action in the complaint hypothetically admits the truth of the facts alleged therein. However, the hypothetical admission is limited to the "relevant and material facts well pleaded in the complaint and inferences fairly deductible therefrom. The admission does not extend to conclusion or interpretations of law; nor does it cover allegations of fact the falsity of which is subject to judicial notice." [19] In *De Dios v. Bristol Laboratories (Phils.), Inc.*, [20] this Court was more particular in explaining that:

xxx. For the purpose, the motion to dismiss must hypothetically admit the truth of the facts alleged in the complaint. The admission, however, is limited only to all material and relevant facts which are well pleaded in the complaint. Thus, it had been ruled that a demurrer admits only such matters of fact as are sufficiently pleaded; that the demurrer does not admit the truth of mere epithets charging fraud; nor allegations of legal conclusions; nor an erroneous statement of law. The admission of the truth of material and relevant facts well pleaded does not extend to render a demurrer an admission of inferences or conclusions drawn therefrom, even if alleged in the pleading ; nor mere influences or conclusions from facts not stated; nor conclusions of law; nor matters of evidence; nor surplusage and irrelevant matter.xxx.

The main question in the instant petition is whether the allegations in the complaint sufficiently plead a cause of action to hold the petitioners liable for damages. According to the complaint, the petitioners violated private respondent's constitutional rights for knowingly and maliciously filing a legally non-existent offense and for depriving him of his right to be notified of the filing of the case against him. Inasmuch as private respondent seeks to hold the petitioners accountable for the damage he has suffered as a result of the case filed against him, his suit against the petitioners is one for malicious prosecution. In *Drilon v. Court of Appeals*,^[21] where the facts in said case are basically the same as in the instant case,^[22] we also labeled the complaint filed by complainant Homobono Adaza as one for malicious prosecution. It is defined as an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. The gist of the action is the putting of legal process in force, regularly, for the mere purpose of vexation or injury.^[23] The statutory bases for a civil action for damages for malicious prosecution are found in the provisions of the New Civil Code on Human Relations and on damages particularly Articles 19, 20, 21, 26, 29, 32, 33, 35, 2217 and 2219(8).^[24] A complaint for malicious prosecution states a cause of action if it alleges: 1) that the defendant was himself the prosecutor or that at least he instigated the prosecution; 2) that the prosecution finally terminated in the plaintiff's acquittal; 3) that in bringing the action the prosecutor acted without probable cause; and, 4) that the prosecutor was actuated by malice, i.e., by improper and sinister motives.^[25] We have no reason to depart from our ruling in the said *Drilon* case. It is our view and we hold that private respondent's complaint fails to state a cause of action to hold the petitioners liable for malicious prosecution.

First, the complaint for damages was filed long before private respondent's acquittal in the rebellion charge thereby rendering the subject action premature. At the time the complaint was filed, the criminal action against private respondent has not yet ended. That the criminal case eventually resulted in private respondent's acquittal during the pendency of the civil case for damages is of no moment inasmuch as the latter should be filed only after the accused is acquitted in the criminal case. To allow private respondent to file a complaint, for damages based on malicious prosecution, before his acquittal would stifle the prosecution of criminal cases by the mere expediency of filing damage suits against the prosecutors.

The complaint for damages cannot be based on the dismissal of the separate charge for violation of P.D. No. 1829 inasmuch as the complaint does not contain any allegation to that effect. The complaint actually limits the claim for damages based on the filing of the rebellion charge against the petitioners. Hence, it cannot be sustained based on the dismissal of the case for violation of P.D. No. 1829.

Second, there are no factual allegations in the complaint that can support a finding that malice and bad faith motivated the petitioners in filing the information against private respondent. Allegations of bad faith, malice and other related words without ultimate facts to support the same are mere conclusions of law that are not deemed admitted in a motion to dismiss for lack of cause of action. From our reading of the complaint, we find no ultimate facts to buttress these conclusions of law.

In *Drilon*, this Court held that;

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Lack of cause of action, as a ground for a motion to dismiss... must appear on the face of the complaint itself, meaning that it must be determined from the allegations of the complaint and from none other. The infirmity of the complaint in this regard is only too obvious to have escaped respondent judge's attention. Paragraph 14 of the complaint which states:

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14. The malicious prosecution, nay persecution, of plaintiff for a non-existent crime had severely injured and besmirched plaintiff's name and reputation and forever stigmatized his stature as a public figure, thereby causing him extreme physical suffering, serious anxiety, mental anguish, moral shock and social humiliation."

is a mere conclusion of law and is not an averment or allegation of ultimate facts. It does not, therefore, aid in any wise the complaint in setting forth a valid cause of action against the petitioners.

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The allegations of bad faith and malice in the complaint are based on the ground that the petitioners knowingly and allegedly maliciously filed the information for an offense that does not exist in the statute books. But as we have ruled in *Drilon*:

In the case under consideration, the decision of the Special Team of Prosecutors to file the information for rebellion with murder and frustrated murder against respondent Adaza, among others, cannot be dismissed as the mere product of whim or caprice on the part of the prosecutors who conducted the preliminary investigation... While it is true that the petitioners were fully aware of the prevailing jurisprudence enunciated in *People v. Hernandez*, which proscribes the complexing of murder and other common crimes with rebellion, petitioners were of the honest conviction that the *Hernandez* Case can be differentiated from the present case. The petitioners thus argued:

"Of course we are aware of the ruling in *People v. Hernandez*, 99 Phil 515, which held that common crimes like murder, arson, etc., are absorbed by rebellion. However, the *Hernandez* case is different from the present case before us. In the *Hernandez* case, the common crimes of murder, arson, etc. were found by the fiscal to have been committed as a necessary means to commit rebellion, or in furtherance thereof. Thus, the fiscal filed an information for rebellion alleging those common crimes as a necessary means of committing the offense charged under the second part of Article 48, RPC.

We, however, find no occasion to apply the *Hernandez* ruling since as intimated above, the crimes of murder and frustrated murder in this case were absolutely unnecessary to commit rebellion although they were the natural consequences of the unlawful bombing. Hence, the applicable provision is the first part of Article 48 of the RPC."

While the Supreme Court in the case of *Enrile v. Salazar*, addressing the issue of whether or not the *Hernandez* doctrine is still good law, in a 10-3 vote, did not sustain the position espoused by the herein petitioners on the matter, three justices felt the need to re-study the *Hernandez* ruling in light of present-day developments, among whom was then Chief Justice Marcelo Fernan...

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Apparently, not even the Supreme Court then was of one mind in debunking the theory being advanced by the petitioners in this case, some of whom were also the petitioners in the *Enrile* case.

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A doubtful or difficult question of law may become the basis of good faith and, in this regard, the law always

accords to public officials the presumption of good faith and regularity in the performance of official duties.[Tatad v. Garcia, Jr., 243 SCRA 436, 463 (1995)] Any person who seeks to establish otherwise has the burden of proving bad faith or ill-motive. Here, since the petitioners were of the honest conviction that there was probable cause to hold respondent Adaza for trial for the crime of rebellion with murder and frustrated murder, and since Adaza himself, through counsel, did not allege in his complaint lack of probable cause, we find that the petitioners cannot be held liable for malicious prosecution. Needless to say, probable cause was not wanting in the institution of Criminal Case No. Q-90-11855 against Adaza.

As to the requirement that the prosecutor must be impelled by malice in bringing the unfounded action, suffice it to state that the presence of probable cause signifies, as a legal consequence, the absence of malice.(Albenson Enterprises Corp., supra.) At the risk of being repetitious, it is evident in this case that petitioners were not motivated by malicious intent or by a sinister design to unduly harass private respondent, but only by a well-founded belief that respondent Adaza can be held for trial for the crime alleged in the information.

All told, the complaint, dated July 11, 1990, filed by Adaza before Branch 100 of the Regional Trial Court against the petitioners does not allege facts sufficient to constitute a cause of action for malicious prosecution.

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As a result, these general allegations do not help private respondent's action against petitioners. It is well settled that one cannot be held liable for allegedly maliciously instituting a prosecution where there is probable cause. Otherwise stated, a suit for malicious prosecution will lie only in cases where a legal prosecution has been carried on without probable cause. The reason for this rule is that it would be a very great discouragement to public justice, if prosecutors, who had tolerable ground of suspicion, were liable to be sued at law when their indictment miscarried. [26] On the issue of whether the petitioners should be held accountable for knowingly filing a non-existent offense, this Court has definitely ruled in *Enrile v. Salazar* that:

The plaint of petitioner's (herein private respondent) counsel that he is charged with a crime that does not exist in the statute books, while technically correct in so far as the Court has ruled that rebellion may not be complexed with other offenses committed on the occasion thereof, must therefore be dismissed as a mere flight of rhetoric. Read in the context of *Hernandez*, the information does indeed charge the petitioner with a crime defined and punished by the Revised Penal code: simple rebellion.[27]

Accordingly, despite its defect, the information filed by petitioners remained valid inasmuch as it nevertheless charges an offense against the herein private respondent.

With respect to private respondent's second basis for the charge of malicious prosecution, that is, he was denied by the petitioners the right to be notified before the criminal information against him, his complaint alleges that:

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More particularly, these defendants originally filed or caused the filing of the information ...on 21 February 1990 but, for some mysterious reason, the information was subsequently withdrawn. The initial filing and withdrawal of the information - defendant Chavez admitted these facts during the Supreme Court hearing on 6 March 1990 - were done in total secrecy and without the knowledge of plaintiff who learned of this incident only after his arrest on 27 February 1990.

Likewise, on or about 27 February 1990, these defendants deliberately misled plaintiff and his lawyers and induced them to believe that the charge of rebellion "complexed" was set to be filed against the plaintiff in the Regional Trial Court of Makati. While plaintiff's attention was diverted to the Regional Trial Court of Makati, these defendants surreptitiously filed or caused the filing of the main information for rebellion "complexed" in

the Regional Trial court of Quezon City.[28] xxx

However, we hold that the said allegations still fail to maintain a cause of action against the petitioners. To reiterate, a cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[29]

In the case at bar, we fail to see any right of the private respondent supposedly violated by the petitioners. Nowhere in the statute books is a prospective accused given the right to be notified beforehand of the filing of an information against him. Likewise, the withdrawal of the information and the subsequent re-filing of the same do not constitute an actionable wrong inasmuch as the filing or re-filing of an information lies within the discretion of the prosecutor who must act independently of the affected parties.

Private respondent claims that an appeal or an original action for certiorari is not the proper remedy for a defendant whose motion to dismiss has been denied by the trial court for the reason that the order does not terminate the proceedings, nor finally dispose of the contentions of the parties. In its decision affirming the trial court's denial of the motion to dismiss, the appellate court sustained this contention. However, as correctly pointed out by the petitioners, the rule admits of an exception. Thus, where the denial of the motion to dismiss by the trial court was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, as in the case at bar, the aggrieved party may assail the order of denial on certiorari.[30] A wide breadth of discretion is granted in certiorari proceedings in the interest of substantial justice and to prevent a substantial wrong.[31] In the Drilon case, we also held that the denial by the trial court of the motion to dismiss of herein petitioners based on the same grounds as in the instant petition constituted grave abuse of discretion for the reason that "this (private respondent's baseless action) would unjustly compel the petitioners to needlessly go through a protracted trial and thereby unduly burden the court with one more futile and inconsequential case." [32] The appellate court therefore erred in not ruling that the trial court committed a grave abuse of discretion when the latter refused to dismiss the case as against herein petitioners, notwithstanding the obvious insufficiency of the complaint against them.

WHEREFORE, the petition is GRANTED. The Decision dated June 29, 1992 of respondent Court of Appeals and its Resolution dated August 27, 1992 which affirmed the Orders of the respondent Regional Trial Court of Makati City, dated October 8, 1991 and January 6, 1992 are hereby NULLIFIED AND SET ASIDE. The respondent Regional Trial Court of Makati is hereby ordered to take no further action in Civil Case No. 90-2327 except to dismiss the same.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Eduardo R. Bengzon, and concurred in by Associate Justices Lorna S. Lombos-de la Fuente and Quirino D. Abad Santos, Jr.; Court of Appeals Rollo, pp. 159-167.

[2] Court of Appeals Rollo, p. 186.

[3] Rollo, pp. 93-95.

[4] Rollo, pp. 96-102.

[5] 186 SCRA 218 (1990).

[6] 99 Phil 515 (1956).

[7] 189 SCRA 573 (1990).

[8] Rollo, pp. 40-54.

[9] Rollo, p. 72.

[10] Rollo, p. 94.

[11] Rollo, pp. 110-111.

[12] Rollo, p. 305.

[13] Rollo, pp. 269-270, 287.

[14] Rollo, p. 201.

[15] Court of Appeals Rollo, pp. 129-156.

[16] Court of Appeals Rollo, pp. 179-183.

[17] Revised Rules of Civil Procedure, Rule 3, Sec. 2.

[18] Vergara v. Court of Appeals, 319 SCRA 323, 327 (1999).

[19] San Lorenzo Village Association, Inc. v. Court of Appeals, 288 SCRA 115, 126 (1998).

[20] 55 SCRA 349, 354 (1974).**[21] 270 SCRA 211 (1997).**

[22] Homobono Adaza was charged by the Special Team of Prosecutors composed of herein petitioners and supervised by petitioner Drilon, with the crime of rebellion complexed with murder and frustrated murder. Before the criminal case was terminated, Adaza then filed a complaint for damages against the same petitioners for engaging in a deliberate, willful and malicious experimentation by filing against him a charge of rebellion complexed with murder and frustrated murder when petitioners, according to Adaza, were fully aware of the non-existence of such crime in the statute books.

[23] Supra, note 21, p. 220, citing Cabasaan v. Anota, 14169-R, November 19, 1956.

[24] Id., citing Albenson Enterprises Corp. v. Court of Appeals, 217 SCRA 16, 28 (1993); Ponce v. Legaspi, 208 SCRA 377, 388 (1992); 199 SCRA 63, 68-70 (1991).

[25] Cometa v. Court of Appeals, 301 SCRA 459, 466 (1999).

[26] Supra, note 21, p. 222 citing Albenson Enterprises Corp. v. Court of Appeals, 217 SCRA 16, 28 (1993); Que v. Intermediate Appellate Court, 169 SCRA 137 (1989).

[27] Supra, note 5, p. 229.

[28] Rollo, pp. 50-51.

[29] Supra, note 18.

[30] Gutib v. Court of Appeals, 312 SCRA 365, 378 (1999); Dizon v. Court of Appeals, 210 SCRA 107 (1992); Quisumbing v. Gumban, 193 SCRA 520 (1991); National Investment and Development Corporation v. Aquino, 163 SCRA 153 (1988).

[31] Gutib v. Court of Appeals, 312 SCRA 365, 378 (1999).

[32] Supra, note 21, p. 226.

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