

MAMITUA SABER, SUBSTITUTED BY HIS HEIRS, REPRESENTED BY ORFIA ALICER SABER, PETITIONERS, VS. COURT OF APPEALS, PHILIPPINE AMANAH BANK AND ASGARI ARADJI, RESPONDENTS.*G.R. No. 132981. August 31, 2004*

Ponente: CALLEJO, SR., J.

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This is a petition for review on certiorari filed by the heirs of Dr. Mamitua Saber of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 22626 reversing the Decision[2] of the Regional Trial Court of Marawi City, Branch 9, in Civil Case No. 2323 (84-R), as well as the Resolution of the appellate court denying the motion for reconsideration thereof.

The Antecedents

On April 8, 1974 then President Ferdinand E. Marcos appointed Dr. Mamitua Saber, then Dean of Research at the Mindanao State University and Acting Director, National Science Museum, as Executive Vice-President of the Philippine Amanah Bank (PAB).[3] He was also designated as the Officer-in-Charge of the bank pending the election of its president by the Board of Directors. Saber was surprised because he did not apply for appointment to the position. He inquired from Executive Secretary Alejandro Melchor why he was appointed thereto, considering that he had no experience whatsoever in the field of business and banking. He was told that he was chosen by the President from among forty applicants because of his proven personal integrity. Saber took a year-long leave of absence from the university and assumed office at the PAB. From the serenity of the academe, he plunged head-on into the turbulent and intricate world of business.

One of the members of the Board of Directors of the bank was Asgari Aradji who was also the Acting Chairman of the Screening Committee for Personnel. Martin Saludo, then Senior Vice-President of the Philippine National Bank (PNB), was a management consultant of the PAB.

Saber was sent to Malaysia to study how its Malaysian government prepared and managed the annual Muslim pilgrimage (Hajj) to Mecca, and thus, avoid the fiascos that plagued previous such pilgrimages of Filipino Muslims in the past. After his stint in Malaysia, Saber resumed his duties at the PAB.

In a Letter dated September 19, 1974, Executive Secretary Alejandro Melchor informed Chairman of the PAB Board of Directors Dr. Cesar A. Majul, that the bank had been designated to make appropriate preparations and arrangements for the annual pilgrimage of Filipino Muslims to Mecca.[4] The next day, Majul forwarded the letter to Saber, directing the latter to undertake the appropriate arrangements for the pilgrimage.[5] Saber was concerned because he had only two months to prepare; the pilgrims had to be in Mecca in time for the one-day ceremony at Mt. Arafat on December 23, 1974. Considering that Saber had no experience thereon, the PAB Board of Directors designated Saludo as the head of the one-man oversight committee to oversee the preparations.

Saber issued Office Memorandum No. 92 forming a Pilgrimage Secretariat with the following officers: Atty.

Lanang S. Ali, as Chairman and Pilgrimage Administrator; Dialel Basman, as Finance Officer; and Kuisan Go, as Trade and Investment Officer. Saber later issued Office Order No. 95, designating ten (10) members of the Secretariat who would join the pilgrimage and coordinate the same. This included Lugum Uka, as Vice-Chairman, and Alexander Lucman, as member.[6] On October 4, 1974, Saber issued another Memorandum delineating the specific duties of the Secretariat members who were joining the trip.[7]

Saber decided to charter the M/V Sweet Homes, owned by the Sweet Lines, Inc., for the trip. In behalf of the PAB, as charter, Saber executed a Uniform Time-Charter on October 15, 1974 under which the PAB chartered the M/V Sweet Homes to transport the pilgrims to Mecca and back to the Philippines for P5,300,000 cash, the amount budgeted[8] by the PAB. The parties executed a Rider to Charter Party in which the PAB was allowed to load cargoes in the cargo hold of the vessel up to 500 metric tons free of freight.[9] The vessel was scheduled to leave on November 28, 1974. There was no time to lose; the PAB conducted a massive information drive to inform the Muslims of the arrangements, including the accommodations on board the vessel and urged them to join the Hajj through the bank. Prospective pilgrims, including PAB depositors, made reservations for the voyage and made partial payments for their tickets thereon.

On October 25, 1974, Saber wrote then President Marcos requesting that other parties not be allowed to charter any ship or aircraft bringing pilgrims to Jeddah, to avoid unfair competition with the PAB.[10] However, President Marcos granted Congressman Ali Dimaporo and some politicians from Lanao del Sur permission to charter a plane to transport the pilgrims. Worse, Sacar Basman, the General Manager of the Arabian Gulf Export Agency Corporation (AGEAC) had been representing to the public that he was one of the Pilgrimage Directors, that he had been allotted 25 passengers for the voyage on board the M/V Sweet Homes and solicited fare payments from interested pilgrims.[11]

On November 8, 1974, Indar Tampi, the Marawi Branch Manager of the PAB, wrote Saber expressing his disappointment over the turn of events – politicians being allowed to charter a private plane which was in direct competition with the PAB. He stated that this could derail the success of the pilgrimage and cause great financial loss to the bank. He also expressed his apprehensions about the representations of Sacar Basman that he was one of pilgrimage directors, and that he was allotted 25 accommodations on the M/V Sweet Homes.[12] Tampi sent a telegram to Saber on November 14, 1974 informing the latter that many prospective passengers, including 120 depositors of the PAB who were booked for the voyage on board the M/V Sweet Homes, had withdrawn their reservations. Furthermore, about 200 1st and 2nd class cabin accommodations were rendered vacant.[13] When he learned of the foregoing developments, President Marcos was alarmed and ordered that pilgrims going to Mecca by plane be limited to 100 passengers.[14]

In November 1974, Saber formed a three-man panel called the “Troika,” composed of Atty. Lanang Ali, Dialel Basman and Ibrahim Mamao, to coordinate the arrangements for the pilgrimage. Rather than allow the vessel to leave for Mecca with many vacant cabins, Saber decided to sell tickets to Basman on credit. He issued a Memorandum[15] on November 21, 1974, informing the Troika that he had reached an agreement with Basman that the latter would purchase forty (40) first class (ordinary) cabin accommodations and thirty (30) second class (dormitory) accommodations on board the M/V Sweet Homes, and that Basman would pay via a postdated check. Saber directed the Troika to implement the agreement. Saber issued a supplemental memorandum to the Secretariat ordering it as follows:

... [T]o give and issue on credit purchase basis additional One Hundred Twenty (120) fare tickets all of first class accommodations at P6,500.00 each under the following terms and conditions, tax FREE;

- The said fare tickets all first class accommodations at P6,500.00 each in the total sum of SEVEN HUNDRED FIFTY-SIX THOUSAND (P756,000.00) PESOS, Philippine Currency, shall consist of the unsold tickets and

the same shall be given and issued to Datu Sacar Basman on credit purchase basis.

- The said sum of P756,000.00 shall be paid by means of post-dated check issued by Datu Sacar Basman in favor of the Philippine Amanah Bank.[16]

In a parallel development, Atty. Mangawan Toro, the Legal Counsel of the PAB, prepared a Freight Contract which the PAB, through Saber, and the AGEAC, through Basman, its General Manager, executed without the approval of the PAB Board of Directors. Under the contract, AGEAC was allowed to load on the M/V Sweet Homes chartered by the PAB, exportable/importable goods and other cargoes on its trip to Saudi Arabia and return, in consideration of P178,000 to be paid by AGEAC via a postdated check, under the following terms and conditions:

- That the PARTY OF THE SECOND PART will pay, and hand in and deliver the payment of the consideration referred to above within a period of ten (10) days from and after arrival in the Philippines in its return home trip.
- That as a security for the payment of the freight agreed upon, the PARTY OF THE SECOND PART hereby agrees that the PARTY OF THE FIRST PART shall have a superior lien in the proceeds on the sale of the goods evidenced by the bill of lading, invoices and other documents and/or on the goods in case no sale is made.[17]

On the other hand, Saber stated in his Memo-Directives in the Secretariat that in connection with the Freight Contract with AGEAC –

- The proceeds of the exported goods sold shall be placed in the possession of the PAB Treasurer or his authorized representative which shall be made available to Datu Sacar Basman for use in payment for goods to be imported; likewise, the proceeds derived from the sale of the imported goods shall be kept by the said Treasurer or his authorized representative and all sums indicated in the postdated check/s issued by Datu Sacar Basman be deducted therefrom and/or whatever amount or sums of money due to the bank as embodied in the memo-directive of November 21, 1974 and in this addendum, likewise, in other contracts signed by the parties herein.[18]

Although they believed that the agreements of Saber with Basman/AGEAC were against the policies of the PAB, the Troika/Secretariat had to implement the Memoranda, and because of Saber's insistence, gave the tickets to Basman. In payment thereof, Basman drew and issued PAB Check Nos. 00377 and 00378, both postdated February 4, 1975 against his account No. 10000008 payable to PAB with no amounts written thereon.[19] Basman loaded exportable goods on board the vessel. When the vessel arrived in Saudi Arabia, the authorities did not allow the M/V Sweet Homes to dock. Its passengers were boarded on boats and transported to the pier. Basman failed to unload and sell the exportable goods, much less purchase importable goods. When the postdated checks were deposited on the due dates thereof in the account of the PAB, they were dishonored.[20] Basman, likewise, failed to pay for the freight charge for the exportable cargo of AGEAC to Saudi Arabia. Consequently, the PAB sustained a huge financial loss.

PAB Auditor Aramis Aguilar submitted his Report of the Accounts Receivables in connection with the pilgrimage in the total amount of P1,033,700, thus:

SCHEDULE OF RECEIVABLES

I.**FOR TICKETS SOLD:**

1.

SACAR BASMAN**P654,000.00**

2.

78 PASSENGERS (SURRENDEREES) SPONSORED BY PC AUTHORITIES

296,400.00

3.

EIGHT (8) PERSONS GUARANTEED BY AMBASSADOR L. PANGANDAMAN

49,600.00

4.

NASCUIN DAKINANGCOB

1,700.00

5.

ACMAD BUAT

2,700.00

6.

ALI USMAN

3,800.00

7.

ALI LAGUINDAB

3,800.00

SUB-TOTAL**P1,012,000.00****II.**

FOR MUTAWIFF:

1.

COSAIN ALI USMAN

900.00

2.

SURRENDEREES ASSESSED BY THE PC AUTHORITIES

13,600.00

3.

EIGHT (8) PASSENGERS GUARANTEED BY AMBASSADOR L. PANGANDAMAN

7,200.00

3.

EIGHT (8) PASSENGERS GUARANTEED BY AMBASSADOR L. PANGANDAMAN

7,200.00

SUB-TOTAL**P 21,700.00****TOTAL RECEIVABLES****P 1,033,700.00[21]**

During the meeting of the PAB Board of Directors, Saber was present. The Board, after exhaustive deliberations, approved Resolution No. 67, Series of 1975, without any objection, declaring Saber liable for the receivables on the ground that the Board did not authorize him to sell tickets on credit payable via postdated checks, and to execute the Freight Contract with AGEAC. The Board directed Saber to collect the receivables himself, because of its perception that if the PAB endeavored to collect the receivables, it would, thereby, be ratifying the unauthorized acts of Saber.

PAB Director Asgari A. Aradji, who was also Acting Chairman of the Personnel Screening Committee of the PAB, made verbal representations to the PAB Board of Directors to grant PAB Management Consultant and PAB Senior Vice-President Martin L. Saludo the power to perform the duties and exercise the powers of PAB President, in lieu of Saber who was only the Officer-in-Charge. He issued a Memorandum to the Board of Directors, through the Chairman of the Board, on February 21, 1975 reiterating his proposal. He explained the following therein:

Specifically, I refer to the mishandling of the 1974 MECCA Pilgrimage. The Board set a budget of P5.53 million but the incumbent OIC authorized a total disbursement of P9.157 million or an excess of P3.62 million.

As Chairman of the Personnel Screening Committee, I have discovered, much to my surprise, that a number of employees have been retained in spite their not having the necessary qualifications for the positions; other[s]

were terminated despite the fact that they are more deserving than those who were retained.

These instances clearly indicate the apparent lack of exercise of effective leadership which is so vital and essential at this crucial stage if we are to make the Amanah Bank truly responsive to the needs of our Muslim brothers. Moreover, the purpose for which Dr. Namitua Saber has been designated as OIC have already been accomplished and such designation has become academic with the constitution of the PAB Board of Directors.[22]

Meanwhile, Saber's leave of absence at the Mindanao State University expired and he had to report back to the university. He applied for a clearance from the PAB. Assistant Auditor Rodolfo Ocampo signed the said clearance for and in behalf of Auditor Aramis Aguilar, subject to Resolution No. 67, Series of 1975 of the PAB Board of Directors. Because of the conditional clearance issued by the PAB, Saber was reinstated to his position as professor at the university with the salary of P34,000.00 per annum, but not to his former position as Dean for Research.

On May 6, 1975, the PAB Board of Directors approved Resolution No. 92 confirming the recommendation of the management of the bank for the creation of an Investigating Committee of five (5) members, chaired by Aradji, to look into the administrative and/or criminal liabilities of the persons involved in the Pilgrimage Project.[23] It also resolved that pending the outcome of the investigation, Saber be given only a conditional clearance.[24]

During the formal investigation, Saber testified and submitted documentary evidence. Aradji submitted his Report to the PAB Board of Directors that there was basis for Saber to be charged with violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and recommended that the proper criminal complaint be filed against him. The management approved the recommendation of Aradji.

On July 10, 1975, the Board of Directors of the PAB approved Resolution No. 155 confirming the recommendation of the PAB Management based on the Report of the Investigating Committee headed by Aradji. The resolution authorized the filing of a criminal complaint against Saber for violation of Rep. Act No. 3019, and for Aradji to sign the said complaint and testify against Saber:

- That a criminal case for violation of the provisions of the Anti-Graft and Corrupt Practices Act (Republic Act 3019) be filed against Dr. Mamitua Saber and that Director Asgari A. Aradji, Chairman, Investigation Committee, 1974 Mecca Pilgrimage Project be authorized, as he is hereby authorized to sign for and in behalf of the Bank the complaint against Dr. Mamitua Saber and thereafter to testify and represent the Bank. Should sufficient evidence be found later to prove conspiracy in the preparation and execution of the Freight Contract, the memorandum and the addendum thereto mentioned above, that Messrs. Lanang Ali, Mañgawan Doro, Dialel Basman and other persons involved be included as respondents;[25]

Pursuant thereto, Aradji signed the criminal complaint filed with the Office of the City Fiscal of Zamboanga City against Saber for violation of Rep. Act No. 3019. The case was docketed as Slip No. 527-75. The complaint, as well as the report on the investigation of Saber, was the subject of a news item in the Times Journal, a newspaper of general circulation under the by-line of reporter Emilio Macaspac.[26]

On October 6, 1975, Saber filed a civil complaint for damages in the RTC of Marawi City, Branch 9, against the PAB,[27] the Chairman and the members of its Board of Directors, its Managing Director Martin Saludo, Auditor Aramis Aguilar, and Assistant Auditor Rodolfo Ocampo. Saber alleged therein that the PAB was authorized to make the appropriate arrangements for the pilgrimage; he had the implied authority to enter into transactions, including the authority to sell the tickets to Basman on credit and to execute the Freight Contract with AGEAC. He pointed out that Martin Saludo, who was appointed by the Board of Directors to oversee the preparation of the pilgrimage, approved the said transactions; hence, he is not personally liable for the receivables of P1,033,700. He

alleged that the defendants therein acted arbitrarily, oppressively and unfairly in considering the receivables in connection with the pilgrimage as his personal obligation and in approving Resolution No. 67. He further averred that the conditional clearance made by Ocampo and Aguilar caused him great damage and prejudice, and that the filing of the anti-graft charges against him by the PAB and its Board of Directors was devoid of any factual and legal basis. He claimed that the filing of the charges, the nationwide publication thereof at the behest of the PAB, and the press release of the Investigating Committee's report and the complaint caused him dishonor, shame, discredit and contempt, shock, besmirched reputation, and wounded feelings, for which the defendants were liable for moral, exemplary and actual damages. He also alleged that because of his preventive suspension, he failed to receive his salary from the Mindanao State University, causing him and his family severe economic losses. He further claimed that Aradji and Saludo conspired to oust him from the PAB.

Saber, thereafter, prayed that, after due proceedings, judgment be rendered in his favor:

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff and against defendants, as follows:

- Declaring PAB Board's Resolution No. 67, Series of 1975 (Annex 'D') null and void;
- Ordering the deletion of the questioned notation 'Subject to Board Resolution No. 67, Series of 1975' contained in the Certificate of Clearance (Annex 'E');
- Ordering defendant, jointly and severally in their official and/or personal capacity, to pay plaintiff, the following:
 - The amount of no less than P1,000,000.00 as and for moral damages;
 - The amount of no less than P3,650.00 monthly from July 1975, until plaintiff shall have resumed his position in the Mindanao State University;
 - The amount of no less than P100,000.00 as nominal damages;
 - A reasonable amount to be determined by the Honorable Court, as and for exemplary damages;
 - Attorney's fees in the amount equivalent to 25% of whatever amount is awarded by the Honorable Court in favor of the plaintiff.

Plaintiff further prays for such other and further relief as this Honorable Court may deem just and equitable in the premises.[28]

On motion of Saber, the complaint was dismissed as against the chairman and members of the PAB Board of Directors.[29]

The remaining defendants therein, the PAB and Aradji, alleged the following in their Answer: Saber sold tickets on credit to Basman payable via postdated checks without authority from the PAB Board of Directors; defendant Martin Saludo approved in principle the lease of the cargo spaces in the M/V Sweet Home, but subject to the approval of the PAB Board of Directors; the said lease contract, including the Freight Contract with AGEAC, was never approved by the PAB Board of Directors; the PAB had no obligation to issue a clearance to Saber, and it would have been injudicious it to have done so on account of Saber's unpaid personal obligations to the bank; contrary to Saber's claim, there were factual and legal bases for the approval of Resolution No. 67 and the filing of the graft charges against him; Saber made no allegations in the complaint that they (the defendants therein) caused or in any way participated in the publication of the charges filed by the PAB against him; and, the defendants acted in good faith, in the performance of their duties in the filing of the complaint in violation of Section 3, Rep. Act No. 3019.

On December 9, 1975, the Board of Trustees of the MSU approved Resolution No. 969, Series of 1975, approving the reinstatement of Saber to his former position as Dean of Research, with the corresponding salary effective from the date he would report for work.[30]

After a preliminary investigation, Special Counsel Genaro T. Lorena, Jr. of the Office of the City Fiscal issued a Resolution dismissing the complaint in Slip No. 527-75.[31] The petition for review thereon filed by the PAB was dismissed on August 2, 1978.[32] However, upon review by the Tanodbayan, the resolution of the Special Counsel was reversed with the following recommendation:

The undersigned finds and so holds that there exists a prima facie case for violation of Sec. 3, par. (e) on three (3) counts (on the basis of the memoranda of November 21 and 28, 1974, and that of the freight contract, respectively) of the Anti-Graft Law against respondents MAMITUA SABER, LANANG ALI, DIALEL BASMAN, IBRAHIM MAMAO, TINDUG MACARAMBON, IBRAHIM MACADATAR and SACAR BASMAN, and that they are probably guilty thereof. Accordingly, it is recommended that the corresponding informations for Violation of the Anti-Graft Law be filed against respondents.[33]

Three Informations were filed against Saber, Sacar Basman, Lanang Ali, Dialel Basman, Ibrahim Mamao, Tindug Macarambon and Ibrahim Macadatar in the Sandiganbayan for violation of Section 3(e) of Rep. Act No. 3019. The cases were docketed as Criminal Cases Nos. 1835 to 1837.[34] Saber was preventively suspended by the Sandiganbayan as required by law.

After trial, the Sandiganbayan rendered a Decision on January 6, 1982 acquitting all the accused.[35] In acquitting Saber of the charge, the Sandiganbayan ruled:

It is of no legal consequence that both the MEMORANDUM and the ADDENDUM were not approved by the Board of Directors of the BANK. For one thing, it is not the absence of such approval that made the transactions subject of both documents criminal under the penalizing Act but whether they caused undue injury to the BANK or gave unwarranted benefits, advantage or preference to Sacar Basman through manifest partiality, evident bad faith or gross inexcusable negligence of the accused BANK officials, which the court believes did not. For another thing, the time element and the fact that the members of the Board were themselves responsible officials of different government offices precluded convening them to a meeting for that purpose. And still for another thing, Dr. Saber, who was then the Executive Vice President and Officer-in-Charge of the BANK and entrusted with the management of the Pilgrimage Project must be deemed to have been impliedly clothed with authority to enter into any contract related to the Project. A corporate officer, entrusted with the general management and control of its business, has implied authority to make any contract or do any other act which is necessary or appropriate to the conduct of the ordinary business of the corporation. (Board of Liquidators vs. Kalaw, supra, citing 2 Fletcher Cyclopedia Corporations, p. 607.)[36]

On February 11, 1989, the RTC rendered a Decision in Civil Case No. 2323 in favor of Saber, and against the PAB and Aradji, thus:

WHEREFORE, for all the foregoing findings, judgment is hereby rendered in favor of plaintiff and against defendants, as follows:

- Ordering defendant Philippine Amanah Bank jointly and severally with defendant Asgari Aradji, to pay plaintiff the amounts of:
- Nine Hundred Thousand (P900,000.00) Pesos as moral damages;
- One Hundred Thousand (P100,000.00) Pesos as nominal damages;
- Seventy Thousand (P70,000.00) Pesos as and for Attorney's fee; and

- The costs of suit.

SO ORDERED.[37]

The trial court ruled that the PAB and Aradji were liable for damages based on the following:

...(1) Malicious Prosecution of the criminal cases against plaintiff; (2) Libel arising from derogatory and malicious publications against plaintiff; and (3) willful injury against plaintiff under the provisions of the New Civil Code on Human Relations, arising from Resolution No. 67, Series of 1975 and the conditional clearance in question.[38]

The trial court based its ruling partly on the decision of the Sandiganbayan in Criminal Cases Nos. 1836 to 1837, on the finding that the PAB and Aradji caused the publication of the filing of the criminal charges against Saber in the Office of the City Fiscal in the Times Journal, and that the ouster of the plaintiff from the PAB was instigated by Aradji. Thus:

... It is un rebutted that plaintiff's ouster was conspired in as demonstrated by the fact that when Saludo and other members of the Task Force prepared the budget for Amanah Bank, the salary of the President of the Bank was P67,000.00 per annum and the salary of the Executive Vice-President which the plaintiff assumed was P48,000.00 but to pressure plaintiff from giving up his position, the Board was moved by Saludo to reduce his salary to only P30,000.00 per annum. When plaintiff left the Bank, Saludo took over the position which plaintiff held. After Saludo, defendant Aradji assumed the position of Executive Vice-President, the same position which plaintiff held before he left the Bank. (pp. 4, 26, Deposition of Aradji).[39]

The trial court also ruled that the sales of the tickets to Basman on credit and the execution of the Freight Contract were with the prior approval of Martin Saludo, the head of the One-Man Oversight Committee, as well as Nestor Kalaw, who was the PNB Legal Counsel.

The decision was appealed to the Court of Appeals, which rendered a judgment reversing the decision of the trial court. The CA ruled that Saber failed to prove bad faith and malice against the PAB and Aradji in the performance of their duties, and in exercising the powers of their office. It also held that the latter acted out of duty to protect the interests of the PAB. The CA further ratiocinated that –

Defendants could not be blamed for acting the way they did for they were charged with the duty to act for the bank with loyalty and dedication, and according to their best judgment. It is a well-known rule of law that questions of policy or of management are left solely to the honest decisions of officers and directors of a corporation, and so long as they act in good faith, their orders are not reviewable by the courts.

It is, thus, evident that defendants PAB and Aradji were not in the least motivated by any malicious intent or by a sinister design to unduly harass plaintiff Saber, but only by a well-founded anxiety to protect the interests of the bank when they caused the filing of a criminal complaint against the latter. The facts which presented themselves were such as would excite the belief in a reasonable mind that the person charged was guilty of the crimes for which he was prosecuted. This is the essence of probable cause which eliminates the element of malice essential in making out a case of malicious prosecution. (Almendra v. Alvero, 50 SCRA 62 [1965]).

But whether or not defendants' perception of the facts and circumstances is actually correct is irrelevant, the only issue being whether or not there was probable cause in the filing of the criminal complaint.[40]

The appellate court disagreed with the trial court's finding of the existence of conspiracy between Saludo and Aradji, thus:

Nor can we see any "conspiracy" to pressure Saber into giving up his position by the reduction of his salary. As explained by defendants, PAB's salary structure could not be made at par with that of the Philippine National Bank, for instance, since it was just a small bank with a paid-up capital of only P50 Million and

moreover, it had only eight branches. It was therefore deemed necessary to rationalize the salary level of the bank's officers and staff to make the operations of the bank more economically sound and viable.[41]

The Present Petition

In the meantime, Saber died intestate. His heirs, represented by Orfia Alicer Saber, filed the instant petition for review on certiorari of the decision of the CA, alleging that the appellate court erred in reversing the decision of the trial court:

Petitioners herein respectfully submit that the Court a quo committed error in concluding that under the environmental circumstances, the award of damages to plaintiff may not be sustained whether based on the principle of abuse of rights or for malicious prosecution.[42]

The petitioners aver that Saber was able to prove his claims for damages against the respondent, based on the principles of abuse of rights and malicious prosecution.

The petitioners contend that the respondents acted with malice and/or in bad faith. They allege that Saber was deprived of his right to be investigated by the impartial investigator. They pointed out that respondent Aradji, who was the Chairman of the Investigating Committee, was biased against Saber, considering that the respondent made strong representations to the Board of Directors of the respondent bank that he (Saber) be replaced by Saludo. The petitioners stress that respondent Aradji, a non-lawyer, was designated to head the Investigating Committee to investigate the pilgrimage fiasco. The petitioners also allege that Saber was denied due process, as he was never furnished with a copy of the Report of the Investigating Committee. They claim that Saludo and respondent Aradji pressed Saber into resigning by proposing for the reduction of his salary as PAB Executive Vice-President from P48,000 per annum to P24,000 per annum, and conspired to oust him from the said position and as officer-in-charge of the petitioner bank because of their ambitions: Saludo aspired to become the president of the respondent bank, while respondent Aradji wanted to be the Managing Director.

The petitioners claim that Saber acted in good faith in entering into agreements with Basman/AGEAC as confirmed by the Sandiganbayan in its decision; yet, respondent PAB still approved Resolution No. 67, Series of 1975, holding Saber personally liable for P1,012,000.00 even before the PAB tried to collect the amount from the debtors; by its acts, the respondent bank merely made Saber as a scapegoat.

Finally, the petitioners aver that the respondents are liable for damages for malicious prosecution because (a) Saber alone was charged for violation of Rep. Act No. 3019, although there were others who were involved in the pilgrimage fiasco; and (b) despite the dismissal of the criminal complaint by the Special Counsel, the respondents, nevertheless, pursued their appeal in the Tanodbayan who found probable cause against Saber which finding was barren of factual basis as confirmed by the decision of the Sandiganbayan acquitting him of the charges.

The Ruling of the Court

The petition has no merit.

Abuse of right under Article 19 of the New Civil Code on which Saber anchored his claim for damages and attorney's fees, provides:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

The elements of abuse of rights are the following: (a) the existence of a legal right or duty which is exercised in bad faith; and (b) for the sole intent of prejudicing or injuring another. Malice or bad faith is at the core of said

provision.[43] Good faith is presumed and he who alleges bad faith has the duty to prove the same.[44] Good faith refers to the state of the mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another.[45] A public officer is presumed to have acted in good faith in the performance of his duties. Unless there is a clear showing of malice, bad faith or gross negligence, such public officer is not liable for moral and exemplary damages for acts done in the performance of his official duties.[46] Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.[47] Bad faith, on the other hand, does not simply connote bad judgment to simple negligence, dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill-will that partakes of the nature of fraud.[48] Malice connotes ill-will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.[49]

We agree with the petitioners that a person other than respondent Aradji should have been designated as Chairperson of the Investigating Committee to investigate the pilgrimage fiasco. This is so because in his Memorandum to the Board of Directors of the PAB on February 21, 1975, respondent Aradji had declared that the 1974 Mecca pilgrimage under the supervision of Saber was mishandled and there were indications then that there was an apparent lack of exercise of effective leadership which was so vital and essential to make the bank truly responsive to the needs of the Filipino Muslims. Respondent Aradji then proposed that Saludo exercise the powers of the president of the respondent bank in place of Saber. In fine, respondent Aradji attributed the problems attendant to the pilgrimage fiasco to Saber. But then Saber did not oppose the designation by the Board of Directors for respondent Aradji to be the Chairman of the Investigating Committee, or even asked for the latter's inhibition. Saber must have believed that he could still prove that he acted in good faith, and was not guilty of any wrongdoing regardless of any misconception of respondent Aradji. Besides, respondent Aradji was only the chairman of the committee, and there were four (4) other members who could rule in Saber's favor. As it was, Saber even appeared before the committee and adduced testimonial and documentary evidence in his behalf. Thus, Saber testified:

Q

Now, what was your role in the investigation when you were invited to appear?

A

As I have stated, they wanted me to shed light or give information about the behavior or what had happened in that pilgrimage.

Q

Did you actually appear and testified?

A

Yes, I testified. I even gave the committee some documentary reports, a copy of the report which had been submitted to the chairman of the bank, Dr. Majul.

Q

You said that Mr. Aradji headed the investigation committee created by the bank. Is that Mr. Aradji the same defendant in this case?

A

Yes, sir.[50]

It was only after the Report and Recommendation of the Investigating Committee was approved by the Board of Directors of the respondent PAB, and the subsequent publication of the said report in the Times Journal that Saber complained, for the first time, of the impropriety of the designation of respondent Aradji as Chairman of the committee.

In any event, it cannot be concluded that the Board of Directors of the PAB acted in bad faith or with malice in designating the respondent Aradji as chairman of the committee, and that the latter acted in bad faith or with malice in accepting the position and in not inhibiting himself from the said investigation.

Respondent Aradji was the Acting Chairman of the Personnel Servicing Committee. There were four (4) other members of the Investigating Committee, one of whom was a lawyer, Atty. Arasad Alpad, Jr.; the other members were Executive Vice-President Berua Ibrahim and Assistant Vice-President Alexander Lacman,[51] all of whom could rule for Saber based on the evidence on record. Moreover, the report and recommendations of the committee were still subject to the review of the Board of Directors of the respondent bank, which included then Minister Cesar Virata. Respondent Aradji, for his part, could also still rule for Saber, based on the evidence on record.

It is true that in his Memorandum dated February 21, 1975 respondent Aradji proposed to the Board of Directors of the respondent PAB that Saludo, a Senior Vice-President of the PNB and PAB management consultant, to exercise the powers and perform the duties of the president of the respondent bank, in effect terminating the designation of Saber as Officer-in-Charge. However, he did so not to spite Saber, but for good and justifiable reasons, thus:

Mr. Saludo has behind him more than 35 years of solid banking experience and expertise in the Bank. He is acceptable to both Christians and Muslims. I strongly believe that he is imminently qualified to exercise the duties and powers of the President of the Bank.

For the record, I wish to emphasize that Mr. Saludo was never sought much less intimated to me his desire to exercise such duties and powers. On the contrary, his being connected with our Bank is an additional burden to him but which he has graciously accepted as [a] challenge to place the Bank on a competitive level with the other commercial banks in the country.

In submitting this proposal, I am only motivated by my desire to improve the stature of the Bank, which gesture could only be accomplished if we grant the men that executive freedom to act, and to exercise strong, positive and assertive leadership in our organization.[52]

Saber failed to adduce convincing evidence that Saludo and respondent Aradji conspired to oust him from his position as Assistant Vice-President of the respondent bank.

Neither may bad faith nor malice be imputed on the respondents in holding Saber personally liable for the receivables of P1,033,700. The evidence of Saber, no less, shows that he was present during the 16th Meeting of the Board of Directors of the PAB. So were Ministers Cesar Virata and Leonides Virata. After an intensive and exhaustive discussion, the Board resolved that Saber had no authority to enter into any agreement with Basman for the sale of the tickets on credit payable by postdated checks, and to execute a Freight Contract with AGEAC over the cargo hold in the M/V Sweet Homes. The Board unanimously resolved not to ratify the agreements executed by Basman and Saber in behalf of the PAB and with AGEAC, and for Saber to take full responsibility for the collection of receivables. This is shown by the Minutes of the stenographic notes taken during the Board Meeting:

CHAIRMAN

:

ITEM NO. 3 IS THE PILGRIMAGE PROJECT REPORT.

DIR. L. VIRATA

:

HOW MUCH MONEY DID YOU LOSE?

DIR. C. VIRATA

:

HOW MUCH DID YOU COLLECT FROM BASMAN?

DR. SABER

:

NONE.

DIR. C. VIRATA

:

WHAT IS THE REASON FOR NOT COLLECTING?

DR. SABER

:

WE HAVE SENT HIM DEMAND LETTERS.

DIR. C. VIRATA

:

IS THAT ALL WHAT YOU HAVE DONE?

MR. SALUDO

:

IN THE CASE OF SACAR BASMAN, THE MANAGEMENT COMMITTEE IS PREPARING LETTERS ON THIS, BUT WE HAVE NOT FINISHED THEM YET. IF WE ARE GOING TO DEMAND MONEY FROM BASMAN, THE THING IS, IT COMPELS US THAT WE ARE RECOGNIZING AN UNAUTHORIZED ACT OF MANAGEMENT, BECAUSE THE MOMENT AN OFFICIAL DEMAND LETTER WILL BE MADE, THEY WILL FILE AN ACTION AGAINST US, BECAUSE I UNDERSTAND THAT THE TICKETS ARE ACTUALLY FIRST CLASS BUT SOLD AT DISCOUNTED RATES.

DIR. DOMINGO

:

WILL YOU REPEAT THOSE WORDS?

DIR. C. VIRATA

:

IS THAT ALL WHAT YOU HAVE DONE?

MR. SALUDO

:

THAT THEY WILL FILE AN ACTION AGAINST AMANAH BANK FOR ALLEGED VIOLATION OF THE CONTRACT BETWEEN DR. SABER AND SACAR BASMAN. SINCE THE DELIVERY OF TICKETS TO BASMAN IS WITHOUT THE CONSENT AND KNOWLEDGE OF THE BOARD, THIS WILL BE EQUIVALENT TO SANCTIONING THE ACTION OF MANAGEMENT.

DIR. C. VIRATA

:

I THINK WE SANCTIONED THE ACTS OF MANAGEMENT TO COLLECT. IT WAS DONE BY MANAGEMENT AND THEREFORE WE ARE ASKING MANAGEMENT TO COLLECT. IF WE CAN'T DO ANYTHING, WE WILL BE RESPONSIBLE THE SAME AS MANAGEMENT.

DIR. L. VIRATA

:

I AGREE, THERE IS NO OTHER WAY.

CHAIRMAN

:

IF THE TICKETS ARE THEN SOLD AT 3[RD] CLASS RATES NOT FIRST CLASS.

MR. SALUDO

:

MR. BASMAN IS NOW IN MANILA.

DIR. L. VIRATA

:

LET HIM DO WHATEVER HE WANTS TO DO AGAINST THE BANK. YOU CAN NOT COUNT ON US, DR. SABER. YOU TRY TO PRESS YOUR COLLECTION WITHOUT THE BOARD BEING INVOLVED.

THERE IS NO OTHER WAY.

DIR. C. VIRATA

:

HOW MUCH IS THE AMOUNT INVOLVED?

MR. SALUDO

:

THE VALUE OF THE TICKETS IS P700,000.00 PLUS THE COST OF THE FREIGHTAGE.

CHAIRMAN

:

YOU STUDY ALL THE LEGALITIES.

DR. SABER

:

I GAVE A DIRECTIVE TO MY LEGAL OFFICER ABOUT THIS INCLUDING THE CHECK THAT BOUNCED BUT ISSUED TO THE AMANAH BANK.

CHAIRMAN

:

HE ISSUED A CHECK THAT BOUNCED. HOW CAN THE BOARD HELD (SIC) MANAGEMENT. LET US HELP MANAGEMENT. CAN WE HAVE LAWYERS FROM OTHER INSTITUTIONS THAT CAN HELP THE LEGAL OFFICER? THE LEGAL OFFICER IS ONLY ONE MAN. YOU MIGHT HAVE CONSULTANTS IN OTHER INSTITUTIONS, CAN WE ALLOW THEM TO HELP?

DIR. L. VIRATA

:

I THINK, MR. SALUDO CAN TAKE CARE OF THAT.

DIR. CRUZ

:

WE HAVE ALSO THE CORPORATE SECRETARY, IT'S A SIMPLE CASE.

DR. SABER

:

WE ARE ALL SADDLED IN (SIC) THIS PROBLEM, WE HAVE TO CONCENTRATE ALL OUR EFFORTS.

MR. SALUDO

:

ATTY. SADAC IS A LAWYER, THERE ARE PROBLEMS BUT WE HAVE TO CONCENTRATE ON THIS.

ATTY. ABBAS

:

DOES THE BOARD RATIFY SUCH ACT?

DIR. C. VIRATA

:

NO.

ATTY. ABBAS

:

IS IT AGAINST DR. SABER IN HIS INDIVIDUAL CAPACITY?

DR. SABER

:

I HAVE NOT BEEN ACTING AS AN INDIVIDUAL PERSON. I HAVE ALWAYS ACTED ON THAT BECAUSE IT IS PART OF MY POSITION AS AN OFFICER OF THE BANK. THERE IS NOT A SINGLE ACT THAT HAVE NOT THINK (SIC) TO SAVE THE PREDICAMENT OF THE BOAT IN THE TENSE MOMENTS. WHEN THE BOAT WAS ABOUT TO LEAVE, MY TROIKA RECOMMENDED TO ME THAT THIS IS THE RECOURSE, EVEN MY LEGAL OFFICER ADVISED ME, EVEN THE AUDITOR HIMSELF WHO IS (SIC) THERE IN ZAMBOANGA. IF (SIC) IT WAS REALLY VERY URGENT THAT I HAVE TO ACT ON THE SPOT. I HAVE TO TAKE (SIC) A DECISION BECAUSE IT IS GOING TO AFFECT THE ENTIRE BOAT IF THE RESULT WAS NEGATIVE BUT THE REAL INTENTION IS (SIC) TO HELP. WE THOUGHT THAT WE WILL MAKE GOOD FOR THE BANK.

DIR. C. VIRATA

:

I THINK, WE HAVE TO CLARIFY, DR. SABER, AS BETWEEN THE RESPONSIBILITY OF THE OFFICERS AND THAT OF THE BOARD. WHILE IT IS TRUE THAT YOU HAVE CERTAIN DISCRETIONARY POWERS BUT THAT IS EITHER AFFIRMED OR REVIEWED BY THE BOARD. IN THIS CASE, YOU HAVE NO AUTHORITY ON THIS VERY IMPORTANT MATTER SO YOU HAVE TO TAKE ON YOUR INDIVIDUAL CAPACITY BECAUSE THE BOARD REFUSES TO SHARE THE RESPONSIBILITY.

DIR. DOMINGO

:

WHICH WE WILL REVIEW OR AFFIRM.

DIR. C. VIRATA

:

THAT IS THE RESPONSIBILITY AS BEING THE HEAD OF THE INSTITUTION AND ALL OF US ARE SUBJECT TO THIS RESTRICTION.

CHAIRMAN

:

SO, I THINK, BETTER MUSTER ALL THE LEGAL MINDS IN THE BANK, MR. SALUDO AND THE STAFF.

DIR. DOMINGO

:

AND FINISH THIS ONCE AND FOR ALL.

MR. SALUDO

:

WE COULD FILE AN ACTION AGAINST SACAR BASMAN. THE QUESTION IS, CAN WE RECOMMEND?

DIR. CRUZ

:

THAT IS RATIFYING AN ACT.

MR. SALUDO

:

WE DECLARED THAT TROIKA IS SHORT.

DR. SABER

:

THE TROIKA IS HERE.

DIR. C. VIRATA

:

IT IS USELESS. THE TROIKA WILL SAY THAT DR. SABER WAS THE ONE.

CHAIRMAN

:

YOU RUN AFTER THEM INDIVIDUALLY.

DIR. DOMINGO

:

WHO ARE THE MEMBERS OF THE TROIKA?

DR. SABER

:

THEY ARE: ATTY. LANANG ALI, ADMINISTRATOR, DIALEL BASMAN, THE TREASURER, TINDUG MACARAMBON, PROJECT ACCOUNTANT AND IBRAHIM MAMAO. ANYTHING THEY RECOMMENDED THAT THESE ARE THEIR NEEDS I ISSUED THEM BECAUSE THEY ARE THE ONES IMPLEMENTING. THEY IMPLEMENTED EVEN IN THE BRANCHES AND I THOUGHT IT IS FOR THE GOOD OF THE BANK.

DIR. TEODORO

:

THE PROBLEM HERE IS THEY ARE FUNDS DUE TO THE BANK. THIS BOAT WAS CHARTERED EVEN WITHOUT THE APPROVAL OF THE BOARD.

AUD. AGUILAR

:

EXCUSE ME, THERE IS A POSSIBILITY TO COLLECT BECAUSE THEY HAVE ISSUED A COMMUNICATION ORDERING THE PEOPLE TO RIDE IN THE BOAT.

DIR. CRUZ

:

WE WILL GET GOOD LEGAL ADVISERS HERE. IT MUST BE THE SOLICITOR GENERAL.

CHAIRMAN

:

THIS WAS WHAT I WAS SUGGESTING.

MR. SALUDO

:

ATTY. SADAC HERE IS WILLING TO ASSIST THE LEGAL COUNSEL OF THE AMANAH BANK.

DIR. CRUZ

:

CAN WE NOT ENGAGE THE SERVICES OF THE GOVERNMENT COUNSEL?

CHAIRMAN

:

IF YOU THINK YOU FIND THIS NECESSARY. (MR. SALUDO)

DIR. CRUZ

:

I DON'T KNOW THE LAWYER INVOLVED BUT BASING IN (SIC) OUR EXPERIENCE, UNLESS YOU HIRE A SUPER-DUPER LAWYER AT LEAST YOU CAN EASILY WIN THE CASE. WE COULD ASK FOR THE ASSISTANCE OF THE OFFICE OF THE SOLICITOR GENERAL.

DR. SABER

:

MR. CHAIRMAN AND GENTLEMEN, LET ME COMMENT. WILL YOU PLEASE LOOK ON THIS AFFAIR OF THE PILGRIMAGE NOT IN TERMS OF LOSS BUT IN TERMS OF OTHER THINGS, WHAT ARE THE VARIOUS OUTCOME[S] OF THE PILGRIMAGE.

CHAIRMAN

:

WITH ALL RESPECT TO YOUR VIEWS, DR. SABER, THERE ARE 2 POINTS HERE. THE BANK IS INCURRING LOSSES, THE OTHER ONE IS, THERE ARE PEOPLE OWING MONEY. THESE ARE 2 DIFFERENT THINGS. THE WAY I LOOK AT IT, THE BANK IS ALREADY INCURRING A LOSS OF P900,000. WE ARE ONLY TALKING ON (SIC) THE ACCOUNTS RECEIVABLES, IT CAN ONLY SERVE TO EXPLAIN WHY WE ARE LOSING. I THINK EVERY EFFORT SHOULD BE MADE BECAUSE IT INVOLVED NOT ONLY YOU BUT ALSO OTHER PEOPLE LIKE AMBASSADOR PANGANDAMAN. EVEN THESE PEOPLE, YOU HAVE TO HAVE THE LEGAL COUNSELING TO HELP, AND WE WILL WORK HAND IN HAND WITH OTHER LAWYERS WITH THEIR ADVICE. IF THIS IS DIFFICULT, WE

HAVE GOVERNMENT LAWYERS, THIS IS A GOVERNMENT BANK. WE CAN SEEK THEIR ADVICE. THE PROBLEM IS HOW DO WE COLLECT MONEY? WE ARE NOT TALKING (SIC) THAT THE CHARTER OF THE BOAT IS EXORBITANT, IF IT IS HIGH. THE QUESTION IS HOW CAN THE BANK RECOVER? SHALL THE PEOPLE OWING THE BANK PAY? EVEN THE CHARTER RATE, IT IS VERY BIG, THAT IS SOMETHING ELSE. I THINK, THAT IS THE PROBLEM. I DON'T KNOW IF WE UNDERSTAND THE BOARD HERE, WHETHER WE LIKE IT OR NOT, WE HAVE TO COLLECT.

DIR. CRUZ

:

WE HAVE REACHED A CONSENSUS, WHY DON'T WE GIVE DR. SABER 30 DAYS TO LIQUIDATE? HE IS ACCOUNTABLE, THEN WE WILL DECIDE LATER WHAT COURSE OF ACTION SHALL WE TAKE.

DIR. TEODORO

:

UNTIL THE MONEY IS RETURNED HERE AS THE BOARD HAS FOUND IT NECESSARY AND IT IS REFLECTED IN THE REPORT, AND EFFORTS SHOULD BE MADE ON THE ACCOUNTS RECEIVABLES. HE IS RESPONSIBLE TO GO AFTER THE PEOPLE INVOLVED. THIS IS THE ONLY OFFICIAL ACTION OF THE BOARD.

MR. SALUDO

:

SIR, DO YOU THINK THE CASE WILL DRAG ON IF WE CAN NOT LIQUIDATE WITHIN 30 DAYS?

DIR. TEODORO

:

WE CAN NOT CLOSE OUR EYES THAT THE MONEY OF THE BANK IS LACKING IN AMOUNT.

DIR. CRUZ

:

THE IDEA HERE IS THAT, SUCH LEGAL ACTION ON THOSE PEOPLE RESPONSIBLE, SO THESE PEOPLE HAVE TO LIQUIDATE THE ACCOUNT WITHIN 30 DAYS, FAILURE ON YOUR PART, THEN WE RESORT ON (SIC) THE OTHER COURSE[S] OF ACTION.

CHAIRMAN

:

ANY OBJECTIONS[?]

BOARD MEMBERS

:

NONE.**CHAIRMAN**

:

APPROVED[53]

Indeed, the Sandiganbayan ruled in its decision in Criminal Cases Nos. 1835-1837 that Saber had the implied authority as Executive Vice-President to sell tickets on credit via postdated checks and to allow Basman to load his cargoes in the cargo section of the M/V Sweet Homes; that Saber acted in good faith; hence, was not criminally liable therefor; that the respondent bank resorted to the dubious expedience of charging the receivables against the account of Saber, instead of availing itself of legal remedies for their collection. However, it cannot thereby be concluded that the Board of Directors of respondent PAB acted in bad faith or with malice.

There is no evidence on record that as claimed by the petitioners, Saludo and respondent Aradji conspired to oust Saber as Executive Vice-President of the PAB and Officer-in-Charge. Saludo merely told Saber intimately that it was his ambition to become President of the bank had not President Marcos appointed Saber. Moreover, Saludo and Saber even became intimate friends:

ATTY. FABIE:

CROSS-EXAMINATION TO ELUCIDATE NOT BECAUSE HE DOES NOT UNDERSTAND. IT IS NOT THAT, YOUR HONOR. A PRACTITIONER SHOULD BE FAIR. IF HE CROSS-EXAMINES, THE PURPOSE IS TO ELICIT THE TRUTH, NOT TO DISTORT. HERE, IN THIS CASE, WE WANT THE TRUTH.

ATTY. SADAC:

THAT IS THE PURPOSE OF MY CROSS-EXAMINATION.

COURT:

LET US PROCEED.

ATTY. SADAC: (TO WITNESS)

Q

AGAIN, DR. SABER, ON PAGE 213 OF THE TRANSCRIPT OF STENOGRAPHIC NOTES, DATED JANUARY 16, 1980, YOU TESTIFIED THAT MR. SALUDO ALLEGEDLY MANIFESTED TO YOU HIS DESIRE TO BE PRESIDENT OF THE PHILIPPINE AMANAH BANK. FOR THE INFORMATION OF THIS HONORABLE COURT, WILL YOU TELL US WHEN WAS THIS MADE OR RELAYED TO YOU?

A

DURING MY INCUMBENCY IN THE PHILIPPINE AMANAH BANK. HE DID NOT TELL ME THAT HE DESIRES TO REPLACE ME, ONLY HIS DESIRE TO BECOME PRESIDENT OF THE BANK. HE TOLD ME INTIMATELY, HE SAID: "BROD, IF PRESIDENT MARCOS DID NOT GET YOU I WOULD HAVE BEEN MADE PRESIDENT OF THE PHILIPPINE AMANAH BANK BECAUSE I AM ALSO A MUSLIM." HE TOLD THAT TO ME INTIMATELY. IT WAS INTIMATE, THE SAME AS I WAS INTIMATE WITH YOU.

Q

WHEN WAS THAT WITHIN YOUR INCUMBENCY, WHEN WAS THAT MADE?

A

IN FACT, HE SAID THIS TO ME SEVERAL TIMES, AND AGAIN I CANNOT COUNT HOW MANY TIMES I AM NOT KEEPING STATISTICS OF STATEMENTS.

COURT:

Q

AND THAT WAS SAID TO YOU DURING YOUR INCUMBENCY?

A

YES, YOUR HONOR.

ATTY. SADAC:

Q

WILL YOU TELL US, DR. SABER, BECAUSE WE WANT TO BE SPECIFIC, IN WHAT OCCASION DID MR. SALUDO TELL YOU, WHAT PARTICULAR OCCASION?

A

WELL, UNDER THE ROOF OF THE PHILIPPINE AMANAH BANK AND SOME OTHER OCCASIONS, BUT I CANNOT RECALL AGAIN AS I SAID I DID NOT PUT THIS IN MY DIARY.

Q

YOU CANNOT AGAIN REMEMBER, DR. SABER?

A

YES, SIR.

Q

AND WHEN HE MADE THIS ALLEGED MANIFESTATION OF HIS DESIRE TO BECOME PRESIDENT OF THE PHILIPPINE AMANAH BANK, WERE THERE OTHER PEOPLE AROUND YOU IN THESE ALLEGED SEVERAL OCCASIONS?

A

I CANNOT REMEMBER IF THERE WERE PEOPLE AROUND. IF THERE WERE I WILL BRING THEM TO COURT TO TESTIFY BECAUSE, AS I SAID, THIS IS BETWEEN FRIENDS. MR. SALUDO CONFIRMED HIS FRIENDSHIP TO ME AND WE BECAME FRIENDS WHEN WE WERE IN THE PHILIPPINE AMANAH BANK.[54]

Neither is there evidence that respondent Aradji had any involvement at all in the reduction of Saber's salary from P48,000 to P24,000 per annum. The budget of the bank was modified upon the advice of PNB President Panfilo Domingo and Saludo. This is gleaned from the transcript of stenographic notes of Saber's testimony:

Q

DO YOU KNOW, MR. SABER, FOR THE INFORMATION OF THIS HONORABLE COURT, HOW MUCH DOES THE PRESIDENT OF THE PHILIPPINE AMANAH BANK RECEIVED?

A

THE BUDGET WAS P48,000.00 PER ANNUM, BUT I RECEIVED THAT FOR A FEW MONTHS THE BOARD OF DIRECTORS WITH THE ADVISE OF PRESIDENT DOMINGO OF THE PHILIPPINE NATIONAL BANK AND VICE-PRESIDENT SALUDO REDUCED IT TO 50% AND I WAS PAID ONLY P24,000.00 PER ANNUM. THAT DISCOURAGE ME STAYING WITH THE BANK.

Q

IN OTHER WORDS, THE PRESIDENT OF THE PHILIPPINE AMANAH BANK UNDER THAT NEW BUDGET THAT YOU HAVE MENTIONED IS RECEIVING ABOUT P24,000.00 PER ANNUM?

A

THE LAST SALARY WAS P24,000.00 INSTEAD OF P48,000.00.[55]

The budget was approved by the Board of Directors of the PAB and Central Bank of the Philippines Governor Gregorio Licaros.[56]

Saber failed to adduce evidence that respondent Aradji issued any press release covering his Report to the Board of Directors of the PAB or his formal investigation and the criminal complaint he filed against Saber for violation of Rep. Act No. 3019. The news report of Emil Macaspac of the Times Journal does not attribute the source of the facts contained therein. When pressed to adduce evidence to prove that the news report was based on the press release issued by the respondent Aradji, Saber hedged and surmised that the source of the news report could have been Atty. Roberto Sadac, the Legal Officer of the PAB:

Q

DO YOU KNOW PERSONALLY EMIL MACASPAC, THE REPORTER OF THE TIMES JOURNAL?

ATTY. R. SADAC:

I JUST WANT TO REMIND THE WITNESS THAT HE IS TESTIFYING UNDER OATH.

ATTY. B. FABIE:

THE WITNESS, YOUR HONOR, IS AN INTELLIGENT MAN. DR. SABER IS AN EDUCATOR.

COURT:

GO AHEAD ANSWER THE QUESTION.

WITNESS:

A

I DO NOT KNOW HIM PERSONALLY NOR INTIMATELY ASSOCIATED WITH HIM. I CANNOT REMEMBER HIS FACE BUT HE WAS AMONG THE NEWSPAPER MEN FREQUENTING YOUR OFFICE AND MY OFFICE.

Q

TO BE SPECIFIC DR. SABER, WILL YOU TELL THIS HONORABLE COURT THE DAY OR THE TIME OR THE PERIOD WHEN THESE NEWSPAPER MEN ESPECIALLY EMIL MACASPAC FREQUENTING MY OFFICE OR YOUR OFFICE?

A

I AM GETTING THE EVIDENCE FROM THE DATELINE OF THE NEWS OF JULY 28, 1975. SO, I PRESUMED THAT BEFORE THE NEWS REPORT WAS PRINTED, HE WAS FREQUENTING YOUR OFFICE, OTHERWISE, WHERE IS THE SOURCE OF THE NEWS? HE CANNOT GET IT FROM OUTSIDE.[57]

The respondent PAB cannot be faulted, nor can it be ordered to pay damages and attorney's fees for issuing a conditional clearance to Saber after his resignation from respondent PAB. Saber had not yet liquidated his accountability of P1,012,000 when his leave of absence from the university had expired. The Investigating Committee had yet to commence and terminate its investigation of Saber's accountability, administrative or civil, for the pilgrimage fiasco. The respondent PAB had no discretion to issue a clearance to Saber. It bears stressing that a public officer, in the discharge of his duties has to use prudence, caution and attention in the management of his affairs. In fact, the respondent PAB was duty bound to withhold such clearance to Saber pending final determination of his monetary accountabilities. Even assuming that Saber and/or the petitioners sustained economic difficulties on account of the conditional clearance issued by the respondent PAB, the petitioners are not entitled to moral and exemplary damages. The act of the respondent PAB was not wrongful. It is a case of *damnum absque injuria* and not of *damnum et injuria*.[58]

To constitute malicious prosecution, there must be proof that the prosecutor was prompted by a sinister or devious design to vex and humiliate a person, and that it was initiated deliberately, knowing that the charges are false and

groundless.[59] Malice with probable cause must both be clearly established to justify an award of damages based on malicious prosecution.[60] Lack of probable cause is an element separate and distinct from that of malice. One cannot be held liable for damages for malicious prosecution where he acted with probable cause.[61] We also held that a determination that there is no probable cause cannot be made to rest solely on the fact that the trial court after trial decided to acquit the accused. Neither can lack of probable cause be made to rest on the fact that the finding of probable cause of the Special Counsel was reversed by the Secretary of Justice or the Ombudsman as the case may be.[62] The mere act of submitting the case to the authorities for prosecution does not make one liable for malicious prosecution.[63] Moreover, the adverse result of an action does not per se make the action wrongful and subject the action to damages, for the law could not have meant to impose a penalty on the right to litigate. If damages result from a person's exercise of a right, it is *damnum absque injuria*. [64]

Probable cause is that which engenders a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. A finding for probable cause needs only to rest on evidence showing that in all probability, a crime has been committed by the respondent. Probable cause need not be based on clear and convincing evidence beyond reasonable doubt. While probable cause demands more than mere suspicion, it does not require that the evidence would justify conviction.[65]

Saber failed to prove that the respondents filed the criminal complaints against him with malice and despite lack of probable cause therefor.

The respondent PAB, through respondent Aradji, filed a criminal complaint against Saber for violations of Section 3(e) of Rep. Act No. 3019, which has the following enumerated elements:

- (1) The accused is a public officer or a private person charged in conspiracy with the former;
- (2) The said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions;
- (3) That he or she causes undue injury to any party, whether the government or a private party;
- (4) Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
- (5) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect.[66]

In this case, the Tanodbayan found probable cause for three (3) counts of violations of Section 3(e) of Republic Act No. 3019.[67] Indeed, the evidence on record shows the following:

First. Saber allowed Basman to buy tickets worth P756,000 payable on credit via postdated checks over the objection of the Troika-Secretariat. The postdated checks were blank as to the amounts. As found by the Sandiganbayan:

Pursuant to the MEMORANDUM (Exh. "G"), accused Dialel Basman as Finance Officer of the Secretariat issued to Sacar Basman the seventy (70) tickets therein specified worth P392,000 (t.s.n., p. 23, August 11, 1981), for which Sacar Basman issued Philippine Amanah Bank Check No. 00377 payable to the BANK, postdated February 4, 1975, drawn against Sacar Basman's account No. 10000008 but blank as to the amount (Exh. "I"). Under the ADDENDUM (Exh. "G-1"), Dialel Basman issued one hundred twenty (120) first class tickets to Sacar Basman for which Sacar Basman issued PAB Check No. 00378 payable to the BANK, similarly postdated February 4, 1975, drawn against the same account, and also blank as to the amount. (Exh. "I-1"). ...[68]

Saber failed to ascertain whether Basman issued the said checks against sufficient funds in his account with the respondent bank. When the checks were deposited by respondent PAB in its account, the said checks were

dishonored.

Second. Saber allowed the AGEAC to pay freight charges of P178,000 via Check Nos. 00377 and 00378 postdated February 4, 1975, although the balance of the account of Basman in the respondent bank was only P1,834.55. AGEAC/Basman failed to pay the amount to the respondent PAB after the pilgrimage.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED DUE COURSE. No costs.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Tinga, and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justices Corona Ibay-Somera (retired) and Rodrigo V. Cosico, concurring.

[2] Penned by Judge Amer R. Ibrahim.

[3] Exhibit "A."

[4] Exhibit "D."

[5] Exhibit "E."

[6] Exhibit "F."

[7] Exhibit "F-1."

[8] Exhibit "O."

[9] Exhibits "N-1" and "N-1-a."

[10] Exhibit "I."

[11] Exhibit "J-2."

[12] Ibid.

[13] Exhibit "J."

[14] Ibid.

[15] Exhibit "L."

[16] Exhibit "L-1."

[17] Exhibits "H-1" and "H-2."

[18] Exhibit "L-3."

[19] Exhibit "W."

[20] Exhibit "O-1."

[21] Exhibit "O."

[22] Exhibit "7."

[23] Exhibit “5.”

[24] Ibid.

[25] Exhibit “6-A.”

[26] Exhibit “T.”

[27] The Charter of the PAB, P.D. No. 264, as amended by P.D. 542 was repealed by Republic Act No. 6848 which was approved on January 26, 1990. Section 48 of R.A. No. 6848 provides that:

SEC. 48. Transformation of Islamic Banking Business. - Upon approval of this Act, all the assets, liabilities and capital accounts of the Philippine Amanah Bank are hereby transferred to the A-1Amanah Islamic Investment Bank.

[28] CA Rollo, pp. 100-101.

[29] RTC Decision, p. 1; Records, p. 232.

[30] Exhibit “5.”

[31] Exhibit “U.”

[32] Exhibit “V.”

[33] Exhibit “3-A.”

[34] The Information in Criminal Case No. 1835 is quoted below:

That on or about November 28, 1974, and periods prior and subsequent thereto, at Zamboanga City, Philippines, and within the jurisdiction of this Honorable Court, accused Mamitua Saber, then Executive Vice-President and Officer-in-charge of the Philippine Amanah Bank, a banking corporation owned or controlled by the Philippine Government, with head offices at Zamboanga City, Philippines, (hereinafter called the “Bank”) and who was then the over-all chairman of the 1974 Mecca Pilgrimage Project sponsored by the aforesaid Bank (hereinafter referred to as the “Project”), Atty. Lanang Ali, then Pilgrimage Administrator and Chairman, 1974 Mecca Pilgrimage Troika and Secretariat (each such bodies hereinafter referred to individually as the “Troika” & “Secretariat” and collectively as the “Troika-Secretariat”), Dialel Basman, then Project Treasurer-Finance Officer and Troika-Secretariat Member, Ibrahim Mamao, then auditor and Troika-Secretariat member, Tindug Macarambon, then Project accountant and Secretariat Member, and Ebrahim Macadatar, then Trading Officer and Secretariat member, all of whom are Bank Officers and employees, taking advantage of their official positions, and conspiring, confederating, conniving and cooperating with each other, and with the conspiracy, confederation, connivance and indispensable cooperation of Sacar Basman, then a private citizen but who is now the Philippine Commercial attaché in the Republic of Gabon attached to the Philippine Embassy in said country, with manifest partiality, evident bad faith and/or inexcusable negligence, did then and there willfully, unlawfully and feloniously cause undue injury, loss and prejudice to the Philippine Amanah Bank, including the Government as the owner or controlling stockholder thereof, by preparing, executing, signing and delivering a freight contract dated November 28, 1974, the Bank being therein represented by the accused Mamitua Saber, in favor of the Arabian Gulf Export Agency Corporation (hereinafter referred to as the “Corporation”), represented in said contract by the accused Sacar Basman, allowing the latter to ship goods for export to Saudi Arabia on the M/V Sweet Home, a luxury ship chartered by the Bank for the 1974 pilgrimage to Mecca, Saudi Arabia, and on the return trip to again ship goods for import to the Philippines, all for a consideration of One Hundred Seventy-Eight Thousand Pesos (P178,000.00), but which contract is manifestly and grossly disadvantageous to the Bank considering that the freight charges in the aforementioned amount were not collected by the accused Bank Officials, who were dealing with the accused Sacar Basman directly, in advance, nor a portion thereof by way of down payment on

the charges or any valuable security thereof attempted or required to be collected, taken or received by the said accused, except two (2) blank postdated checks (blank as to amount) numbered 00377 & 00378, respectively, both dated February 4, 1975 drawn on Sacar Basman's current account numbered 10000008 with the Bank which current account contained only at the time a deposit totaling P1,834.55 the gross disadvantageousness of which contract was compounded by provisions in the Freight Contract that the consideration aforesaid will be paid by the Corporation, acting thru the accused Sacar Basman, within a period of ten (10) days after the arrival of the ship in the Philippines, that the proceeds of the goods exported to Saudi Arabia, on which a superior lien was purported to be created by the contract, instead of being delivered and paid to the project treasurer, the accused Dialel Basman who was himself on the trip, shall be placed, as in fact they were placed, in the possession of accused Sacar Basman, who was also on said trip, for himself and as the representative of the Corporation, to be used for the purchase of goods to be imported by the latter into the Philippines, all the accused knowing fully well that the said conditions are grossly disadvantageous to the Bank and greatly favorable, beneficial and profitable to the accused Sacar Basman and the Corporation which he represents, all contrary to and in direct violation of Section 76 of R.A. 337, as amended, otherwise known as the General Banking Act and the By-Laws of the Philippine Amanah Bank, as in fact, the Corporation and Sacar Basman who purported to represent the Corporation failed to pay the freight charges in the amount of P178,000.00, all of the above being the direct result of the accused Bank officials desire to vest to Sacar Basman and the Corporation unwarranted benefits, advantage or preference in the discharge of their official administrative functions through manifest partiality, evident bad faith or gross inexcusable negligence which the accused Sacar Basman procured and knowingly induced the accused bank officials to grant him, to the loss, damage and prejudice of the Bank in the sum of P178,000.00.

CONTRARY TO LAW. (Exhibits "4," "4-A" and "4-B")

The informations in Criminal Cases Nos. 1836 and 1837 are couched in identical language. Only the Information in Crim. Case No. 1836 is hereunder reproduced, with reference footnotes on material facts where it varies from the information in Criminal Case No. 1837, to wit:

That on or about November 21, 1974, and periods prior and subsequent thereto, at Zamboanga City, Philippines, and within the jurisdiction of this Honorable Court, accused Mamitua Saber, then Executive Vice-President and Officer-In-Charge of the Philippine Amanah Bank, a banking corporation owned or controlled by the Philippine Government with head offices at Zamboanga City, Philippines (hereinafter called the "Bank") and who was then the over-all chairman of the 1974 Mecca Pilgrimage Project sponsored by the aforesaid Bank (hereinafter referred to as the "Project"), Atty. Lanang Ali, then Pilgrimage Administrator and Chairman, 1974 Mecca Pilgrimage Troika and Secretariat (each such bodies hereinafter referred to individually as the "Troika" and "Secretariat" and collectively as the "Troika-Secretariat"), Dialel Basman, then Project Treasurer-Finance Officer and Troika-Secretariat member, Ibrahim Mamao, then Project Auditor, General Coordinator and Troika-Secretariat member, Tindug Macarambon, then Project Accountant and Secretariat member, and Ebrahim Macadatar, then Trading Officer and Secretariat member, all of whom are Bank Officers and employees, taking advantage of their official positions and conspiring, confederating, conniving and cooperating with each other and with the conspiracy, confederation, connivance and indispensable cooperation of Sacar Basman, then a private citizen but who is now the Philippine Commercial Attache in the Republic of Gabon attached to the Philippine Embassy in said country, with manifest partiality, evident bad faith and/or inexcusable negligence, did then and there willfully, unlawfully, and feloniously cause undue injury, loss and prejudice to the Philippine Amanah Bank, including the Government as the owner or controlling stockholder thereof by selling, issuing and conveying, without the authority of the Bank's Board of Directors, seventy (70) pilgrim tickets with a total value of FOUR HUNDRED EIGHTY EIGHT THOUSAND PESOS (P488,000.00), Philippine Currency, to accused Sacar Basman on credit without any security or collateral except two (2) postdated blank checks (blank as to amount) numbered 00377 and 00378 both dated February 4, 1975 and drawn on Amanah Bank, when all the accused well knew that at the time of the transaction the same was not authorized by the Bank's Board of Directors, nor was the transaction subsequently ratified by the said Board,

and that Sacar Basman at that time had on deposit in his current account numbered 10000008, the amount of P1,834.55 only, and that said accused Sacar Basman had not been subjected to a credit worthiness and capability of fulfilling his commitment to the Bank contrary to and in direct violation of Section 76 of R.A. 337, as amended, otherwise known as the General Banking Act and the By-Laws of the Philippine Amanah Bank as, in fact, the accused failed to pay his outstanding obligation to the Bank representing the amount of the pilgrim tickets sold to and purchased by him, which amount the latter up to this date, failed and refused to pay despite repeated demands, thus giving accused Sacar Basman, a private party, unwarranted benefits, advantage or preference in the discharge of their official duties which the accused Sacar Basman procured and knowingly induced the accused officials to grant him knowing the same to be unlawful, to the damage and prejudice of the Bank in the sum of P488,000.00, Philippine Currency” (Exhibits “5,” “5-A” and “5-B”)

[35] Exhibit “T.”

[36] Exhibit “WW,” Folder of Exhibits (Appendix “GG”), pp. 44-45.

[37] *Id.* at 34.

[38] Decision, Civil Case No. 2323, p. 21.

[39] *Id.* at 23.

[40] Decision, CA-G.R. CV No. 22626, p. 34.

[41] *Id.* at 28.

[42] Rollo, p. 33.

[43] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 301 SCRA 572 (1999).

[44] *Chua v. Court of Appeals*, 242 SCRA 341 (1997).

[45] *Farolan v. Soliman Marketing Corporation*, 195 SCRA 168 (1999).

[46] *Cojuangco, Jr. v. Court of Appeals, et al.* 30 SCRA 602 (1999).

[47] *Farolan v. Court of Appeals*, *supra*.

[48] *Cojuangco Jr. v. Court of Appeals*, *supra*.

[49] *Boyal v. Court of Appeals*, 201 SCRA (1999).

[50] TSN, 15 January 1980, pp. 189-190.

[51] Exhibit “5.”

[52] Folder of Exhibits for Defendant, p. 86.

[53] Exhibit “O-1.”

[54] TSN, 19 March 1980, pp. 31-33.

[55] *Id.* at 33-34.

[56] *Id.* at 40.

[57] TSN, 15 January 1980, pp. 238-239.

[58] *Custodio v. Court of Appeals*, 253 SCRA 483 (1996).

[59] Orosa v. Court of Appeals, 329 SCRA 852 (2000).

[60] Chua v. Court of Appeals, *supra*.

[61] Conuta v. Court of Appeals, 341 SCRA 563 (1999).

[62] *Ibid*.

[63] Salao v. Salao, 70 SCRA 65 (1976).

[64] ABS-CBN Broadcasting Corporation v. Court of Appeals, *supra*.

[65] Webb v. De Dios, 247 SCRA 652 (1995).

[66] Baylon v. Office of the Ombudsman, 372 SCRA 437 (2001).

[67] Exhibit “1.”

[68] Exhibit “WW.”

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