

SPS. FREDDIE & ELIZABETH WEBB, HUBERT JEFFREY P. WEBB, GRAN JASON WEBB, JOANNA MARIE WEBB, MARYBETH WEBB-AGCAOILI, AND FRITZ GABRIEL WEBB, PETITIONERS, VS. THE SECRETARY OF JUST...

G.R. No. 139120. July 31, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present petition for review on certiorari assails the February 8, 1999 Resolution[1] of the Court of Appeals in CA-G.R. SP No. 50267 which dismissed petitioners' petition for certiorari for having been filed beyond the reglementary period.

On October 13, 1995, spouses Freddie and Elizabeth Webb and their children Hubert Jeffrey P. Webb, Gran Jason Webb, Joanna Marie Webb, Marybeth Webb-Agcaoili, and Fritz Gabriel Webb (petitioners) filed a Joint Affidavit-Complaint[2] with the Office of the City Prosecutor of Makati City, docketed as I.S. No. 95-3485, against the members of the Board of Directors of Philippine Daily Inquirer (PDI), namely: Marixi R. Prieto, Patricio A. Garcia, Karla P. Delgado, Carlos F. Rufino, and Macario S. Rufino; PDI Publisher Isagani Yambot; editor-in-chief Letty Jimenez-Magsanoc; managing editor Jose Ma. D. Nolasco; news editor Artemio T. Engracia, Jr.; assistant news editor Nilo B. Paurom; city editor Pergentino B. Bandayrel; circulation editor Gloria P. Lardizabal; and PDI reporters Christine F. Herrera and Lynda T. Jumilla, for publishing seven alleged false and defamatory news articles implicating petitioners in the Vizconde rape slay case and the purported 'cover-up' thereof.[3]

By their Joint Counter-Affidavit,[4] the respondent-non-members of the PDI Board countered that the questioned news reports were not libelous because:

- They constitute true and fair reports on a matter of public interest and concern, hence, are privileged in nature and are constitutionally protected;
- The privileged nature of the publication destroys the presumption of malice;
- Respondents did not act with malice;
- The defense of privileged nature of the publication could be raised at the preliminary investigation stage;
- The complaint is fatally defective or deficient, it being not supported by affidavits of third persons;
- No damage or prejudice to complainants' reputation has been shown; and
- Complainants failed to establish the basis of criminal liability of respondents who are not the writers of the questioned news reports.[5]

By their Joint Counter-Affidavit,[6] the respondent-members of the PDI Board of Directors adopted the Joint

Counter-Affidavit of their co-respondents, adding that, among other things, they are not included in the enumeration of persons criminally liable for libel under Article 360 of the Revised Penal Code.

After preliminary investigation, the Makati City Prosecutor's Office, by Memorandum of February 5, 1996[7] which bears the imprimatur of the City Prosecutor, dismissed the complaint against the respondent-members of the PDI Board of Directors as Article 360 of the Revised Penal Code is specific in stating that only "the person who shall publish or cause the publication or exhibition; the author or editor of a book or pamphlet; the editor or business manager of a daily newspaper . . . shall be responsible for the defamation contained therein."

The City Prosecutor's Office, however, found probable cause for two counts of libel against respondents Yambot, Jimenez-Magsanoc, Nolasco, Engracia, Paurom, Bandayrel, Lardizabal and Herrera, and one count of libel against respondent Jumilla, arising from the publication in the PDI of news reports entitled *Alabang Boys: A Passion for Basketball and Ecstasy*[8] and *NBI Probers: Webb Papers Falsified*.[9]

Informations for libel were accordingly filed against the non-members of the PDI Board before the Regional Trial Court of Makati City.

On petition for review by petitioners, the Secretary of Justice, by January 22, 1998 letter-resolution[10] addressed to the Makati City Prosecutor, affirmed the dismissal of the complaint against the respondent-PDI members of the Board, and reversed the finding of probable cause against all the other respondents. He accordingly directed the withdrawal of the informations filed against the non-members of the PDI Board.

Petitioners' Motion for Reconsideration[11] of the Secretary of Justice's January 22, 1998 letter-resolution having been denied by letter-resolution[12] of August 26, 1998 addressed to petitioners' counsel, petitioners filed a petition for certiorari before the Court of Appeals.

By Resolution of February 8, 1999, the appellate court dismissed petitioners' petition for certiorari for failure to timely file it, following Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended,[13] which reads:

RULE 65

Sec. 4. Where and when petition to be filed. The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court x x x x If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied)

Hence, the present petition for review on certiorari, anchored on the following grounds:

I

IN DISMISSING THE PETITION BELOW, THE COURT OF APPEALS HAD SANCTIONED THE PATENTLY ERRONEOUS EXERCISE OF JURISDICTION AND MANIFEST DEPARTURE FROM ESTABLISHED DOCTRINES BY RESPONDENT SECRETARY OF JUSTICE -- THIS, MERELY UPON A MINOR TECHNICAL ERROR WHEN CONSIDERATIONS OF EQUITY AND SUBSTANTIAL JUSTICE SHOULD HAVE HELD SWAY. THUS:

- THE NEGLIGIBLE DELAY IN THE FILING OF THE PETITION WAS PURELY A TECHNICAL ERROR CAUSED BY EXCUSABLE NEGLIGENCE AND OVERSIGHT, WHICH IS FAR OUTWEIGHED BY THE INTERESTS OF SUBSTANTIAL JUSTICE COMPELLING THE ADMISSION AND

CONSIDERATION OF THE PETITION BELOW.

- CONSIDERING THAT VIRTUALLY THE SAME ISSUES BETWEEN THE SAME PARTIES ARE IN ANY CASE ALSO RAISED IN CA-GR NO. 51135 BEFORE THE COURT OF APPEALS AND THERE BEING NO PREJUDICE OR DAMAGE WHICH WOULD OTHERWISE RESULT TO THE RESPONDENTS, THE REINSTATEMENT OF THE PETITION AND THE CONSOLIDATION THEREOF WITH CA-GR NO. 51135 WOULD BE IN ORDER TO SERVE THE INTERESTS OF JUSTICE AND PROMOTE THE EFFICIENT DISPOSITION OF CASES.

- THE PETITION INVOLVES CONTUMACIOUS VIOLATIONS OF LIBEL LAW REPEATED SEVEN TIMES, WHICH THE STATE HAS THE INTEREST, NAY THE DUTY, TO PROSECUTE TO THE FULLEST EXTENT OF THE LAW.

II

THE DISMISSED PETITION BEFORE THE COURT OF APPEALS IS OTHERWISE MERITORIOUS SINCE RESPONDENT SECRETARY OF JUSTICE PATENTLY COMMITTED A GRAVE ABUSE OF DISCRETION IN DISMISSING THE SEVEN CRIMINAL COMPLAINTS FOR LIBEL AGAINST PRIVATE RESPONDENTS. THUS:

- IN CHARACTERIZING THE SEVEN NEWS REPORTS AS QUALIFIEDLY PRIVILEGED COMMUNICATION UNDER PARAGRAPH 2 OF ARTICLE 354 OF THE REVISED PENAL CODE, RESPONDENT SECRETARY ASSUMED WITHOUT ANY PROOF OR BASIS, THAT THE SEVEN LIBELS COMPLAINED OF ARE ON AN OFFICIAL PROCEEDING OF THE NBI.

- NEITHER IS THERE ANY PROOF OF THE CONCURRENCE OF ALL THE ELEMENTS REQUIRED FOR QUALIFIEDLY PRIVILEGED COMMUNICATIONS UNDER PARAGRAPH 2 OF ARTICLE 354 OF THE REVISED PENAL CODE AS WOULD RESULT IN THE NON-APPLICATION OF THE PRESUMPTION OF MALICE MANDATED IN EACH OF THE SEVEN LIBELS COMPLAINED OF.

- UNDER APPLICABLE LAW AND SETTLED JURISPRUDENCE, THE ABSENCE OF MALICE IN THE PUBLICATION OF DEFAMATORY MATTERS AND THE AVAILABILITY OF PRIVILEGE TO PROTECT THE LIBEL ARE MERE DEFENSES WHICH MUST BE PROVED AT THE TRIAL AND DO NOT THEREFORE CONSTITUTE LEGAL GROUNDS FOR THE DISMISSAL OF A LIBEL AT THE PRELIMINARY INVESTIGATION STAGE. THUS, RESPONDENT SECRETARY'S DECLARATION OF THE PURPORTED LACK OF MALICE IN THE PUBLICATION OF THE ALLEGEDLY PRIVILEGED LIBELS CONSTITUTED AN UNJUSTIFIED EXERCISE OF JUDICIAL FUNCTIONS CLEARLY BEYOND HIS VESTED AUTHORITY IN PRELIMINARY INVESTIGATIONS.

- THE COMPLAINT AND EVIDENCE ON RECORD CLEARLY ESTABLISHED A PRIMA FACIE CASE OF LIBEL AGAINST PRIVATE RESPONDENTS, WHICH PUBLIC RESPONDENT CAPRICIOUSLY, WHIMSICALLY, AND ARBITRARILY REFUSED TO RECOGNIZE (Underscoring supplied).

At the time petitioners' petition for certiorari was filed before the appellate court and even up to the rendition of its assailed Resolution on February 8, 1999, the rule in force was above-quoted Rule 65, Sec. 4. The petition at bar would then fail. The rule, however, was amended during the pendency of the present case before this Court by A.M. No. 00-2-03-SC (Further Amending Section 4, Rule 65 of the 1997 Rules of Civil Procedure) which took effect on September 1, 2000. The 60-day period to file a petition for certiorari is now reckoned from date of receipt of the notice of denial of a motion for reconsideration or new trial if one was filed.[14]

The next "logical step" to take then would be for this Court to direct the appellate court to resolve the petition for certiorari on the merits. Such step, however, would unduly prolong its disposition, hence, this Court shall now resolve the same.[15]

Decisions or resolutions of prosecutors are subject to appeal to the Secretary of Justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors, hence, has power of review over their resolutions. He may thus affirm, nullify, reverse or modify their rulings.[16]

The power of review of the Secretary of Justice is also recognized under Section 4, Rule 112 of the Revised Rules of Court:

Sec. 4. Resolution of Investigating Prosecutor and its review. -- x x x x If upon petition by a proper party under such Rules as the Department of Justice may prescribe or motu proprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties x x x x

Once a complaint or information is filed in court, however, as in the present case, any disposition of the case -- be it dismissal of the case, or conviction or acquittal of the accused -- rests on the sound discretion of the court. For although the prosecutor retains the direction and control of the prosecution of criminal cases even while the case is already in court, he cannot impose his opinion on the trial court[17] which is "the final arbiter on whether or not to proceed with the case."

As a general rule, the determination of probable cause is not lodged with this Court. Our duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions[18] to this rule, none of which are obtaining in the case now before us x x x x Since the Information has already been filed, the final arbiter on whether or not to proceed with the case is the Regional Trial Court as earlier discussed.[19] (Underscoring supplied)

In the present case, there is no showing that the public prosecutor has filed a motion to withdraw the informations before the trial court. The trial judge has thus not been afforded the chance to pass upon any such motion to determine whether probable cause indeed does or does not lie against the accused-non-members of the PDI Board.

With respect to the affirmance by the Secretary of Justice of the exclusion of the respondent-members of the PDI Board of Directors in the information for libel: The records on hand do not show that petitioners have come up with prima facie evidence that respondent-members of the Board actually caused or participated in the publication, or were "in some way directly responsible for the writing, editing or publishing" of the alleged libelous articles.[20] It is on this score that this Court finds that the affirmance by the Secretary of Justice of the dismissal of the complaint against the respondent-members of the PDI Board was not attended with grave abuse of discretion.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), and Corona, JJ., concur.

Panganiban, J., no part, former counsel of a party.

Sandoval-Gutierrez, J., on official leave.

[1] Annex A to Petition for Review on Certiorari, Rollo, pp. 126-127.

[2] Annex C, id., pp. 132-168.

[3] Rollo, p. 48 and p. 104.

[4] Annex F to Petition for Review on Certiorari, id., pp. 192-229. Vide Respondents' Comment to the Petition for Review on Certiorari, id., pp. 631-639.

[5] Vide Rollo, pp. 637-638.

[6] Annex E and I to Petition for Review on Certiorari, id., pp. 182-191 and p. 232, respectively.

[7] Annex "K" to Petition, id., pp. 325-337.

[8] The text of the alleged defamatory article authored by respondent Christine F. Herrera published in the Philippine Daily Inquirer, June 21, 1995 issue, pp. 1, 6 is quoted hereunder:

Alabang Boys: A Passion for Basketball and Ecstasy

"Hubert Webb's group -- Michael Gatchalian, Antonio 'Tony Boy' Lejano, Artemio 'Dong' Ventura, Peter Estrada, Pyke Fernandez, Joey Filart and Miguel Rodriguez -- was known as the 'Alabang Boys.'

". . . The Alabang Boys have not finished their studies because they were 'habitual users' of drugs, said sources, who refused to be identified. Webb is still a management junior in De La Salle.

"'No, they are not habitual users, they are drug addicts,' one of the sources corrected.

"'These boys (suspects) do not bring home the drugs. They use it while they are bumming around,' the source said.

Peeping toms

"They are not serious in their studies because they have lots of money so they thought they do not need to find jobs," the source said. . . .

"Each time the group sniffed shabu or cocaine, they went from house to house in BF Homes and make like 'peeping toms.' 'Trip lang nila,' the source said.

"Despite their notoriety, sources said Webb's group were 'untouchables' in BF Homes. (Rollo, pp. 21-22, and p. 159. Emphasis and underlining in the original)

[9] The text of the alleged defamatory article authored by respondents Christine F. Herrera and Lynda T. Jumilla published in the Philippine Daily Inquirer, June 30, 1995 issue, pp. 1, 11 is quoted hereunder:

NBI Probers: WEBB US Papers Falsified

"Documents presented by Sen. Freddie Webb were 'tampered' to show that his son Hubert was in the United States during the 1991 Vizconde killings, a highly reliable source at the National Bureau of Investigations said yesterday.

x x x x x

"The NBI source said Webb's son had not left the country at all since January 1991.

"A person, who was identified only as 'TJ,' was paid a huge amount of money 'to fix' the travel documents of Hubert, the source said.

"These documents were tampered using grease money, he added.

"The source said TJ used to work with Las Piñas mayor's office and is now under NBI custody.

"Among the travel papers produced by TJ in 1991 were photocopies of Hubert's passport and a United Airlines manifest, listing him as having checked in as passenger No. 385, seat 20D, economy class, of a Manila-San

Francisco flight on March 9, 1991.

"The documents were presented to media by Senator Webb last week, along with California driver's license 818707 issued to Hubert Jeffrey Webb on June 14.

"The NBI checked the license and found that it was fake, the source said.

"All the documents showing that Hubert was in the United States were just part of the Webbs' defense,' the source said. 'Just like TJ, someone has been paid in the United States to produce the documents that would supposedly bolster the Webbs claim that Hubert was in the United States.' (Rollo, p. 24, and pp. 161-162.Emphasis in the original)

[10] Annex "Q" to Petition for Review on Certiorari, Rollo, pp. 436-444.

[11] Annex "R," id., pp. 445-470.

[12] Annex "U," id., pp. 513-516.

[13] The Court of Appeals erroneously referred to Supreme Court Circular No. 39-98, Implementing the Provisions of Republic Act No. 8493, also known as the Speedy Trial Act of 1998, as the resolution which amended Section 4, Rule 65 of the 1997 Rules of Civil Procedure. The correct amendatory resolution is SC Resolution dated July 21, 1998 referring to Bar Matter No. 803.

[14] San Luis v. Court of Appeals, G.R. No. 142649, September 13, 2001, 365 SCRA 279; Unity Fishing Development Corporation v. Court of Appeals, G.R. No. 145415, February 2, 2001, 351 SCRA 140; Systems Factors Corporation v. NLRC, G.R. No. 143789, November 27, 2000, 346 SCRA 149.

[15] Vide, San Luis v. Court of Appeals, supra at 14, 286.

[16] Vide Ledesma v. Court of Appeals, G.R. No. 113216, September 5, 1997, 278 SCRA 656, 676.

[17] Crespo v. Mogul, No. L-53373, June 30, 1987, 151 SCRA 462, 471. Vide also Ledesma v. Court of Appeals, G.R. No. 113216, September 5, 1997, 278 SCRA 656.

[18] Vide Brocka v. Enrile, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183.

[19] Longos Rural Waterworks v. Desierto, G.R. No. 135496, July 30, 2002. Vide Perez v. Hagonoy Rural Bank, Inc., G.R. No. 126210, March 9, 2000, 327 SCRA 588, 604; Roberts, Jr. v. Court of Appeals, G.R. No. 113930, March 5, 1996, 254 SCRA 307, 345.

[20] Vide US v. Taylor, 28 Phil. 599, 605 (1914); Aquino, the Revised Penal Code, Vol. III, 1997 Edition, p. 609.

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