JOSE LUIS ANGEL B. OROSA,PETITIONER, VS. ALBERTO C. ROA,RESPONDENT.

G.R. NO. 140423. July 14, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review is the Resolution[1] dated July 8, 1999 of the Court of Appeals (CA) in CA-G.R. SP No. 53190, dismissing the petition for review under Rule 43 of the 1997 Rules of Civil Procedure thereat filed by the herein petitioner from an adverse resolution of the Secretary of Justice.

The petition is casts against the following factual backdrop:

On November 27, 1996, petitioner, a dentist by profession, filed with the Pasig City Prosecution Office a complaint-affidavit charging respondent Alberto C. Roa, likewise a dentist, with the crime of libel. The complaint, docketed in said office as I.S. No. 96-5442, stemmed from an article entitled "Truth vs. Rumors: Questions against Dr. Orosa" written by respondent and published in the March-April 1996 issue of the Dental Trading Post, a bi-monthly publication of the Dental Exchange Co., Inc. In gist, the article delved into the possibility of a father, who happened to be an examiner in a licensure examination for dentistry where his sons were examinees, manipulating the examinations or the results thereof to enable his children to top the same.

In his complaint-affidavit, petitioner alleged that the article in question is defamatory as it besmirched his honor and reputation as a dentist and as the topnotcher in the dental board examinations held in May 1994.

Respondent denied the accusation, claiming that the article constitutes a "fair and accurate report on a matter of both public and social concern." He averred that the article in question was not written with malice but with a sincere desire to contribute to the improvement of the integrity of professional examinations.

After preliminary investigation, Pasig City Prosecutor Noel Paz issued a Resolution, dismissing petitioner's complaint in this wise:

> The publication being a bona fide communication on matters of public concern, and made without malice, we find the respondent entitled to the protection of the rule on privileged matters under Article 354 of the Revised Penal Code.

Petitioner appealed to the Department of Justice (DOJ). Acting on the appeal, Chief State Prosecutor Jovencito Zuño issued a Resolution (Zuño Resolution), setting aside the findings of the City Prosecutor and directing the latter to file an Information for libel against respondent. Accordingly, in the Regional Trial Court (RTC) of Pasig City, an Information for libel was filed against respondent, thereat docketed as Criminal Case No. 114517.

Adversely affected, respondent appealed to the Secretary of Justice. On October 28, 1998, then Justice Secretary Serafin Cuevas reversed the Zuño Resolution and directed the City Prosecutor of Pasig to withdraw the Information earlier filed with the RTC. In compliance therewith, a "Motion to Withdraw Information" was accordingly filed in court by the Pasig City Prosecution Office.

Petitioner seasonably moved for a reconsideration but his motion was denied by the Secretary of Justice in his Resolution of May 12, 1999.

Therefrom, petitioner went to the CA on a petition for review under Rule 43[2] of the 1997 Rules of Civil Procedure, docketed as CA-G.R. No. SP No. 53190.

As stated at the outset hereof, the CA, in the herein assailed Resolution dated July 8, 1999, dismissed petitioner's petition for review. Partly says the CA in its dismissal Resolution:

> The Pasig City Prosecution Office and the Department of Justice are not among the quasi-judicial agencies included in Section 1 of Rule 43 whose final orders or resolutions are subject to review by the Court of Appeals.
>
> The Supreme Court in its Resolution En Banc dated April 8, 1997, approving the 1997 Rules of Civil Procedure in Bar Matter No. 803, did not include final orders or resolutions issued by these agencies as appealable under Rule 43. The Court of Appeals is therefore not at liberty to supply the omissions in the Rule, that would constitute an encroachment on the rule making power of the Supreme Court.[3]

With his motion for reconsideration having been denied by the CA in its subsequent Resolution of October 14, 1999, petitioner is now with this Court on his submission that the appellate court erred:

I

> XXX IN HOLDING THAT THE RESOLUTIONS OF THE DEPARTMENT OF JUSTICE ARE NOT REVIEWABLE BY IT UNDER RULE 43 OF THE 1997 RULES OF CIVIL PROCEDURE.
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> II
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> XXX IN FINDING THE PETITION IN CA G.R. SP NO. 53190 [WAS] PREMATURELY FILED.
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> III
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> XXX IN HOLDING THAT THE RESOLUTIONS OF THE DEPARTMENT OF JUSTICE ASSAILED IN CA G.R. SP NO. 53190 ARE NOT REVIEWABLE UNDER RULE 65 (sic) OF THE 1997 RULES OF CIVIL PROCEDURE SINCE THESE RESOLUTIONS WERE ISSUED BY THE SECRETARY OF JUSTICE IN THE EXERCISE OF HIS POWER OF CONTROL AND SUPERVISION OVER PROSECUTORS.
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> IV
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> XXX IN NOT RESOLVING THE PETITION IN CA G.R. SP NO. 53190 ON THE MERITS.
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> V
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> XXX IN NOT REVERSING THE ASSAILED RESOLUTION OF THE DEPARTMENT OF JUSTICE IN CA G.R. SP NO. 53190 ON THE FOLLOWING GROUNDS:
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> - RESPONDENT'S APPEAL FROM THE RESOLUTION OF THE DEPARTMENT OF JUSTICE, THROUGH THE CHIEF STATE PROSECUTOR, DATED JANUARY 22, 1998, WAS FATALLY DEFECTIVE.
>
> - RESPONDENT'S ARTICLE WAS DEFAMATORY.
>
> - MALICE ATTENDED THE PUBLICATION OF RESPONDENT'S ARTICLE.
>
> - RESPONDENT'S ARTICLE WAS NOT PROTECTED BY THE MANTLE OF PRIVILEGED MATTER.

As the Court sees it, the petition commends for its consideration the issue of whether or not a petition for review

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under Rule 43 of the 1997 Rules of Civil Procedure is a proper mode of appeal from a resolution of the Secretary of Justice directing the prosecutor to withdraw an information in a criminal case.

It is petitioner's thesis that Rule 43 was intended to apply to all quasi-judicial agencies exercising quasi-judicial functions. Upon this premise, petitioner submits that resolutions of the DOJ in the exercise of its quasi-judicial functions are properly appealable to the CA via a petition for review under Rule 43, adding that the quasi-judicial bodies enumerated under said Rule are not exclusive.

Petitioner's above posture, while valid to a point, will not carry the day for him.

Rule 43 governs all appeals from the Court of Tax Appeals and quasi-judicial bodies to the CA. Section 1 thereof provides:

> Section 1. Scope. –This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals, and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service and Insurance System, Employees' Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

As may be noted, the DOJ is not among the agencies expressly enumerated under Section 1 of Rule 43, albeit any suggestion that it does not perform quasi-judicial functions may have to be rejected. However, its absence from the list of agencies mentioned thereunder does not, by this fact alone, already imply its exclusion from the coverage of said Rule. This is because said Section 1 uses the phrase "among these agencies," thereby implying that the enumeration made is not exclusive of the agencies therein listed.

There is compelling reason to believe, however, that the exclusion of the DOJ from the list is deliberate, being in consonance with the constitutional power of control[4] lodged in the President over executive departments, bureaus and offices. This power of control, which even Congress cannot limit, let alone withdraw, means the power of the Chief Executive to review, alter, modify, nullify, or set aside what a subordinate, e.g., members of the Cabinet and heads of line agencies, had done in the performance of their duties and to substitute the judgment of the former for that of the latter.[5]

Being thus under the control of the President, the Secretary of Justice, or, to be precise, his decision is subject to review of the former. In fine, recourse from the decision of the Secretary of Justice should be to the President, instead of the CA, under the established principle of exhaustion of administrative remedies. The thrust of the rule on exhaustion of administrative remedies is that if an appeal or remedy obtains or is available within the administrative machinery, this should be resorted to before resort can be made to the courts.[6] Immediate recourse to the court would be premature and precipitate; [7] subject to defined exception, a case is susceptible of dismissal for lack of cause of action should a party fail to exhaust administrative remedies.[8] Notably, Section 1, supra, of Rule 43 includes the Office of the President in the agencies named therein, thereby accentuating the fact that appeals from rulings of department heads must first be taken to and resolved by that office before any appellate recourse may be resorted to.

Given the above perspective, the question of whether or not a preliminary investigation is a quasi-judicial proceeding, as petitioner posits, or whether or not the Secretary of Justice performs quasi-judicial functions when

he reviews the findings of a state or city prosecutor is of little moment. The Court wishes, however, to draw attention to what it said in Santos v. Go[9] where the Court, citing Bautista v. Court of Appeals,[10] stated:

> [t]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal [prosecutor] to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal [prosecutor] makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately that pass judgment on the accused, not the fiscal [prosecutor]. (Words in bracket ours)

While now perhaps anti-climactic to delve into, the ensuing holdings of the appellate court are worth quoting:

> The petition is premature. The Information charging respondent with the crime of libel, docketed as Criminal Case No. 114517, is now with Branch 155 of the Regional Trial Court in Pasig City. Thus understood, the said trial court has now the control of the case. The remedy of petitioner is to reiterate the reasons or grounds alleged in his present petition by way of an appropriate opposition to the Pasig City Prosecution Office's "Motion to Withdraw Information" dated November 5, 1998, filed in compliance with the assailed directive of the Secretary of Justice. Having control of the case, the trial court can look into the claim of petitioner. This will enable the trial court to rule on the matter first without the precipitate intervention of this Court. In other words, this is a prerequisite to the elevation of the case to this Court.[11]

In view of the foregoing disquisition, the Court deems it unnecessary to address the other issues raised in the petition.

WHEREFORE, the instant petition is DENIED and the assailed resolution of the Court of Appeals is AFFIRMED.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Teodoro P. Regino (ret.) with Associate Justice Salome A. Montoya (ret.) and Associate Justice Conrado M. Vasquez, Jr. concurring; Rollo, pp. 74-77.

[2] The Rule is entitled, "Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals."

[3] Rollo, p. 74.

[4] Art. VII, Sec. 17, Constitution.

[5Mondano v. Silvosa, 97 Phil. 143; De Leon v. Carpio, G.R. Nos. 85243 & 85442, Oct. 12, 1989, 178 SCRA 457.

[6] Laguna CATVNetwwork, Inc. v. Maraan, G.R. No. 139492, Nov. 19, 2002, 392 SCRA 221.

[7] Garcia v. Court of Appeals, G.R. No. 100579, June 6, 2001, 358 SCRA 416, citing cases.

[8] Province of Zambo. De Norte. v. CA, 342 SCRA 549 and other cases.

[9] G.R. No. 156081, October 19, 2005, 473 SCRA 350.

[10] G.R. No. 143375, July 6, 2001, 360 SCRA 618.

[11] Rollo, pp. 74-75.

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