

AZUCENA B. CORPUZ, PETITIONER, VS. ROMAN G. DEL ROSARIO, RESPONDENT.

G.R. No. 149261. December 15, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

It is a rule too firmly established that the "determination of probable cause for the filing of an Information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice." [1] "judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that the full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation." [2]

Challenged in the present petition for review on certiorari under Rule 45 of the Rules of Court is the Decision [3] dated July 27, 2001 of the Court of Appeals (CA) in CA- G.R. SP No. 56434 denying petitioner's petition for certiorari.

The controversy has its root in an affidavit-complaint [4] filed with the City Prosecutor's Office of Makati City by Assistant Solicitor General Roman G. del Rosario accusing herein petitioner Assistant Solicitor General Azucena B. Corpuz for Libel. In said complaint, respondent claimed that petitioner's June 13, 1997 memorandum was maliciously issued without any good intention but to discredit and cause dishonor to his good name as a government employee. He insisted that the import of the memorandum affected his credibility and the performance of his official functions as Assistant Solicitor General among others.

After the preliminary investigation, Investigating Prosecutor Filipinas Z. Aguilar-Ata (Prosecutor Ata) issued on November 21, 1997, a Resolution making the following findings and recommendation:

We find the words "x x x, there is no such thing as 'palabra de honor as far as ASG del Rosario is concerned,' x x x contained in the memorandum dated June 13, 1997 issued by respondent, defamatory as it imputes a kind of defect on complainant's part which tends to discredit his integrity as an Assistant Solicitor General and the other functions he [holds]. Malice is thus presumed from the defamatory imputation. Moreover, the respondent's disposition of having addressed the Memorandum not only to the Solicitor General but to all Assistants [sic] Solicitors] General reveals the absence of good intention on her part in making the imputation. There was, therefore, undue publication of the libelous Memorandum as in fact, the same was received and read by the officers concerned.

In line, the evidence has sufficiently established a probable cause to indict respondent with the crime of libel, and accordingly, [the] undersigned respectfully recommends that the corresponding information be filed in Court [5]

What transpired then were the following events and proceedings. On December 8, 1997, the City Prosecutor's Office of Makati City approved the Resolution of Prosecutor Ata. Accordingly, an Information for libel was filed

against petitioner with the Regional Trial Court (RTC) of Makati City.

Petitioner's appeal from the prosecutor's resolution was not given due course by NCR Regional Prosecutor/Chief State Prosecutor Jovencito R. Zuño on March 10, 1998.[6] Her motion for reconsideration was likewise denied on September 8, 1998.[7] Petitioner appealed to the Department of Justice (DOJ) assailing the resolution of the City Prosecutor's Office of Makati City. On August 17, 1999, the DOJ Secretary considered the appeal as a second motion for reconsideration and resolved to deny the appeal with finality.[8]

Petitioner then elevated the matter via a petition for certiorari before the CA contending that the public prosecutors gravely abused their discretion in finding a prima facie case of libel against her and exceeded their jurisdiction when her appeal from the resolution of the City Prosecutor's Office of Makati City was not given due course.

Ruling of the Court of Appeals

On July 27, 2001, the CA issued its herein assailed Decision[9] denying the petition. It found that the petitioner failed to clearly show exceptional circumstances to justify her resort to the extraordinary remedy of the writ of certiorari. The appellate court likewise found petitioner's assertions that the memorandum is a privileged communication which was issued without malice are matters of defense which should be properly discussed during trial. The CA disposed the matter in this wise:

WHEREFORE, finding no grave abuse of discretion, amounting to lack or excess of jurisdiction on the part of public respondents, the Petition is DENIED.

SO ORDERED.[10]

The unsuccessful quest by petitioner to reverse the resolutions of the City Prosecutor's Office of Makati City, the Chief State Prosecutor, the DOJ Secretary and the CA did not hamper her struggle. Petitioner is now before us via the instant recourse ascribing to the CA the following assignment of errors:

1. (In) concluding that the findings of the Makati City Prosecutor in the preliminary investigation are essentially factual in nature, and that in assailing such findings petitioner is raising questions of fact;
2. (In) holding that petitioner's arguments that subject memorandum is a privileged communication and that there is absence of malice in the issuance thereof being matters of defense should be resolved by the trial court, and
3. (In) ruling that the extraordinary writ of certiorari is not available since other remedies are obtainable with the trial court.[11]

Per directive[12] of the Court, respondent filed his Comment[13] to the Petition on December 12, 2001. On January 30, 2002, the Court required petitioner to file her reply,[14] which she complied with on April 30, 2002.[15] Pursuant to our Resolution dated June 3, 2002[16] the parties submitted their respective memoranda.

Significantly, in her Reply,[17] petitioner made an absolute turnaround and manifested that she is not assailing in the instant petition the following findings of the Prosecutor: First, that malice is presumed from the defamatory imputation. Second, that the subject memorandum was addressed not only to the Solicitor General but also to all the Assistant Solicitors General who received and read them. Third, that the words "there is no such thing as 'palabra de honor' as far as ASG del Rosario is concerned" imputes a kind of defect on respondent tending to discredit his integrity as an Assistant Solicitor General and the other functions he holds.

Petitioner expressly concedes that the main issue in the present petition is whether the CA correctly ruled that no grave abuse of discretion was committed by the Assistant City Prosecutor in concluding that her findings have

prima facie established the elements of libel despite their not being in accordance with law and jurisprudence on the matter.

Petitioner avers that there are no findings of facts to support the conclusion that the elements of libel exist. She also points out that the findings of the prosecutor are not sufficient to constitute probable cause.

Our Ruling

The contentions of petitioner are devoid of merit.

We have examined the records of the case and have found no such error much less abuse of discretion committed by the prosecutor and the C A justifying a reversal of their resolutions since their unanimous findings of probable cause for libel against petitioner are based on law, jurisprudence and evidence on records.

"Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof." [18] A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. It "need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt." [19] A prosecutor alone determines the sufficiency of evidence that will establish probable cause justifying the filing of criminal information against the respondent since the determination of existence of a probable cause is the function of the prosecutor. Judicial review is allowed only where respondent has clearly established that the prosecutor committed grave abuse of discretion. [20]

"Grave abuse of discretion exists when there is an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or a whimsical, arbitrary or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law." Petitioner miserably failed to establish the existence of any of these exceptional circumstances to warrant further calibration of the parties' evidence presented during the preliminary investigation.

Contrary to petitioner's contention, we find that in arriving at their unanimous conclusion that probable cause for libel exists, the prosecutor and the Secretary of Justice had clearly determined and carefully deliberated on the factual and legal antecedents of the case. The resolution of the prosecutor as sustained by the Secretary of Justice and the CA shows that it squarely addressed and took into consideration all the arguments and evidence submitted. The evidence before the prosecutor served as basis in arriving at her findings of fact.

As defined in Article 353 of the Revised Penal Code, the crime of libel has the following elements:

1. imputation of a crime, vice or defect, real or imaginary or any act, omission, condition, status or circumstance;
2. the imputation must be malicious;
3. it must be given publicity; and
4. the victim must be identifiable.

As extant from the resolution of the prosecutor, the presence of these elements was duly established during the preliminary investigation stage clearly showing prima facie a well-founded belief that a crime of libel has been committed and that petitioner probably committed it. It must be stressed that an accusation is not synonymous with guilt. That is why a trial has to follow, precisely to determine the guilt or innocence of the accused.

Petitioner further contends that the memorandum is covered by the protective mantle of privileged communication

under the first exception enumerated under Article 354, viz:

1. A private communication made by any person to another in the performance of any legal, moral or social duty.

Petitioner's argument is essentially evidentiary in nature and a matter of defense that must be presented and heard during the trial of the criminal case. Whether the subject memorandum is a privileged communication is a question which requires an examination of the parties' evidence. Being a matter of defense, the tenability of her challenge needs to be tested in the crucible of a full-blown trial where she can prove her Innocence if her defense be indeed true than at the preliminary investigation level. It must be stressed that this Court cannot assess the merit of the said claim as it is not a trier of facts.

All told, the undisputed facts of the case negate any showing of grave abuse of discretion or manifest error on the part of the public officers concerned considering their finding of probable cause to indict petitioner is supported by the evidence on record. "[C]ourts should give credence, in the absence of a clear showing of arbitrariness, to the findings and determination of probable cause by prosecutors in a preliminary investigation." [22]

WHEREFORE, the instant petition is hereby DENIED. The Decision dated July 27, 2001 of the Court of Appeals in CA-G.R. SP No. 56434 is AFFIRMED.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-De Castro and Perez, JJ., concur.

[1] First Women s Credit Corporation v. Perez, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[2] Metropolitan Bank and Trust Co. v. Tonda, 392 Phil. 797, 814 (2000).

[3] Rollo, pp. 33-41; penned by Associate Justice Candido V. Rivera and concurred in by Associate Justices Conchita Carpio Morales (now a Member of this Court) and Rebecca De Guia Salvador.

[4] Id. at 50-54.

[5] Id. at 103.

[6] Id. at 106.

[7] Id. at 109.

[8] Id. at 285.

[9] Id. at 33-41.

[10] Id. at 40.

[11] Id. at 20.

[12] See Minute Resolution dated October 22, 2001, id. at 287.

[13] Id. at 288-305.

[14] See Minute Resolution dated January 30, 2002, id. at 347.

[15] Id. at 351-371.

[16] Id. at 373-374.

[17] Id. at 351-371.

[18] Sarigumba v. Sandiganbayan, 491 Phil. 704, 719 (2005).

[19] Webb v. Hon. De Leon, 31 Phil. 758, 789 (1995).

[20] Glaxosmithklim Philippines Inc. v. Khalid Mehwood Malik, G.R. No. 166924, August 17, 2006, 499 SCRA 268, 272-273.

[21] Badiola v. Court of Appeals, G.R. No. 170691, April 23, 2008, 552 SCRA 562, 581.

[22] Pono v. National Labor Relations Commission, 341 Phil. 615, 620 (1997), citing Hon. Drilon v. Court of Appeals, 327 Phil. 916, 927 (1996).

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