

**FERDINAND A. CRUZ, PETITIONER, VS. ALBERTO MINA, HON.
ELEUTERIO F GUERRERO AND HON. ZENAIDA LAGUILLES,
RESPONDENTS.**

G.R. No. 154207. April 27, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Certiorari under Rule 65 of the Rules of Court, grounded on pure questions of law, with Prayer for Preliminary Injunction assailing the Resolution dated May 3, 2002 promulgated by the Regional Trial Court (RTC), Branch 116, Pasay City, in Civil Case No. 02-0137, which denied the issuance of a writ of preliminary injunction against the Metropolitan Trial Court (MeTC), Branch 45, Pasay City, in Criminal Case No. 00-1705;^[1] and the RTC's Order dated June 5, 2002 denying the Motion for Reconsideration. No writ of preliminary injunction was issued by this Court.

The antecedents:

On September 25, 2000, Ferdinand A. Cruz (petitioner) filed before the MeTC a formal Entry of Appearance, as private prosecutor, in Criminal Case No. 00-1705 for Grave Threats, where his father, Mariano Cruz, is the complaining witness.

The petitioner, describing himself as a third year law student, justifies his appearance as private prosecutor on the bases of Section 34 of Rule 138 of the Rules of Court and the ruling of the Court En Banc in *Cantimbuhan v. Judge Cruz, Jr.*^[2] that a non-lawyer may appear before the inferior courts as an agent or friend of a party litigant. The petitioner furthermore avers that his appearance was with the prior conformity of the public prosecutor and a written authority of Mariano Cruz appointing him to be his agent in the prosecution of the said criminal case.

However, in an Order dated February 1, 2002, the MeTC denied permission for petitioner to appear as private prosecutor on the ground that Circular No. 19 governing limited law student practice in conjunction with Rule 138-A of the Rules of Court (Law Student Practice Rule) should take precedence over the ruling of the Court laid down in *Cantimbuhan*; and set the case for continuation of trial.^[3]

On February 13, 2002, petitioner filed before the MeTC a Motion for Reconsideration seeking to reverse the February 1, 2002 Order alleging that Rule 138-A, or the Law Student Practice Rule, does not have the effect of superseding Section 34 of Rule 138, for the authority to interpret the rule is the source itself of the rule, which is the Supreme Court alone.

In an Order dated March 4, 2002, the MeTC denied the Motion for Reconsideration.

On April 2, 2002, the petitioner filed before the RTC a Petition for Certiorari and Mandamus with Prayer for Preliminary Injunction and Temporary Restraining Order against the private respondent and the public respondent MeTC.

After hearing the prayer for preliminary injunction to restrain public respondent MeTC Judge from proceeding with Criminal Case No. 00-1705 pending the Certiorari proceedings, the RTC, in a Resolution dated May 3, 2002, resolved to deny the issuance of an injunctive writ on the ground that the crime of Grave Threats, the subject of Criminal Case No. 00-1705, is one that can be prosecuted de officio, there being no claim for civil indemnity, and that therefore, the intervention of a private prosecutor is not legally tenable.

On May 9, 2002, the petitioner filed before the RTC a Motion for Reconsideration. The petitioner argues that nowhere does the law provide that the crime of Grave Threats has no civil aspect. And last, petitioner cites Bar Matter No. 730 dated June 10, 1997 which expressly provides for the appearance of a non-lawyer before the inferior courts, as an agent or friend of a party litigant, even without the supervision of a member of the bar.

Pending the resolution of the foregoing Motion for Reconsideration before the RTC, the petitioner filed a Second Motion for Reconsideration dated June 7, 2002 with the MeTC seeking the reversal of the March 4, 2002 Denial Order of the said court, on the strength of Bar Matter No. 730, and a Motion to Hold In Abeyance the Trial dated June 10, 2002 of Criminal Case No. 00-1705 pending the outcome of the certiorari proceedings before the RTC.

On June 5, 2002, the RTC issued its Order denying the petitioner's Motion for Reconsideration.

Likewise, in an Order dated June 13, 2002, the MeTC denied the petitioner's Second Motion for Reconsideration and his Motion to Hold in Abeyance the Trial on the ground that the RTC had already denied the Entry of Appearance of petitioner before the MeTC.

On July 30, 2002, the petitioner directly filed with this Court, the instant Petition and assigns the following errors:

I.

the respondent regional trial court abused its discretion when it resolved to deny the prayer for the writ of injunction of the herein petitioner despite petitioner having established the necessity of granting the writ;

II.

THE RESPONDENT TRIAL COURT ABUSED ITS DISCRETION, TANTAMOUNT TO IGNORANCE OF THE LAW, WHEN IT RESOLVED TO DENY THE PRAYER FOR THE WRIT OF PRELIMINARY INJUNCTION AND THE SUBSEQUENT MOTION FOR RECONSIDERATION OF THE HEREIN PETITIONER ON THE BASIS THAT [GRAVE] THREATS HAS NO CIVIL ASPECT, FOR THE SAID BASIS OF DENIAL IS NOT IN ACCORD WITH THE LAW;

III.

THE RESPONDENT METROPOLITAN TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE MOTION TO HOLD IN ABEYANCE TRIAL, WHEN WHAT WAS DENIED BY THE RESPONDENT REGIONAL TRIAL COURT IS THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION and WHEN THE RESPONDENT REGIONAL TRIAL COURT IS YET TO DECIDE ON THE MERITS OF THE PETITION FOR CERTIORARI;

IV.

THE RESPONDENT COURT[s] ARE CLEARLY IGNORING THE LAW WHEN THEY PATENTLY REFUSED TO HEED TO [sic] THE CLEAR MANDATE OF THE LAPUT, CANTIMBUHAN AND BULACAN CASES, AS WELL AS BAR MATTER NO. 730, PROVIDING FOR THE APPEARANCE OF

NON-LAWYERS BEFORE THE LOWER COURTS (MTC'S).[4]

This Court, in exceptional cases, and for compelling reasons, or if warranted by the nature of the issues reviewed, may take cognizance of petitions filed directly before it.[5]

Considering that this case involves the interpretation, clarification, and implementation of Section 34, Rule 138 of the Rules of Court, Bar Matter No. 730, Circular No. 19 governing law student practice and Rule 138-A of the Rules of Court, and the ruling of the Court in *Cantimbuhan*, the Court takes cognizance of herein petition.

The basic question is whether the petitioner, a law student, may appear before an inferior court as an agent or friend of a party litigant.

The courts a quo held that the Law Student Practice Rule as encapsulated in Rule 138-A of the Rules of Court, prohibits the petitioner, as a law student, from entering his appearance in behalf of his father, the private complainant in the criminal case without the supervision of an attorney duly accredited by the law school.

Rule 138-A or the Law Student Practice Rule, provides:

RULE 138-A

LAW STUDENT PRACTICE RULE

Section 1. Conditions for Student Practice. — A law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is enrolled in a recognized law school's clinical legal education program approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school.

Sec. 2. Appearance. — The appearance of the law student authorized by this rule, shall be under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school. Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic.

However, in Resolution[6] dated June 10, 1997 in Bar Matter No. 730, the Court En Banc clarified:

The rule, however, is different if the law student appears before an inferior court, where the issues and procedure are relatively simple. In inferior courts, a law student may appear in his personal capacity without the supervision of a lawyer. Section 34, Rule 138 provides: Sec. 34. By whom litigation is conducted. — In the court of a justice of the peace, a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar.

Thus, a law student may appear before an inferior court as an agent or friend of a party without the supervision of a member of the bar.[7] (Emphasis supplied)

The phrase "In the court of a justice of the peace" in Bar Matter No. 730 is subsequently changed to "In the court of a municipality" as it now appears in Section 34 of Rule 138, thus:[8]

SEC. 34. By whom litigation is conducted. — In the Court of a municipality a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney and his appearance must be either personal or by a duly authorized member of the bar. (Emphasis supplied)

which is the prevailing rule at the time the petitioner filed his Entry of Appearance with the MeTC on September

25, 2000. No real distinction exists for under Section 6, Rule 5 of the Rules of Court, the term Municipal Trial Court as used in these Rules shall include Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts.

There is really no problem as to the application of Section 34 of Rule 138 and Rule 138-A. In the former, the appearance of a non-lawyer, as an agent or friend of a party litigant, is expressly allowed, while the latter rule provides for conditions when a law student, not as an agent or a friend of a party litigant, may appear before the courts.

Petitioner expressly anchored his appearance on Section 34 of Rule 138. The court a quo must have been confused by the fact that petitioner referred to himself as a law student in his entry of appearance. Rule 138-A should not have been used by the courts a quo in denying permission to act as private prosecutor against petitioner for the simple reason that Rule 138-A is not the basis for the petitioner's appearance.

Section 34, Rule 138 is clear that appearance before the inferior courts by a non-lawyer is allowed, irrespective of whether or not he is a law student. As succinctly clarified in Bar Matter No. 730, by virtue of Section 34, Rule 138, a law student may appear, as an agent or a friend of a party litigant, without the supervision of a lawyer before inferior courts.

Petitioner further argues that the RTC erroneously held that, by its very nature, no civil liability may flow from the crime of Grave Threats, and, for this reason, the intervention of a private prosecutor is not possible.

It is clear from the RTC Decision that no such conclusion had been intended by the RTC. In denying the issuance of the injunctive court, the RTC stated in its Decision that there was no claim for civil liability by the private complainant for damages, and that the records of the case do not provide for a claim for indemnity; and that therefore, petitioner's appearance as private prosecutor appears to be legally untenable.

Under Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable except in instances when no actual damage results from an offense, such as espionage, violation of neutrality, flight to an enemy country, and crime against popular representation.[9] The basic rule applies in the instant case, such that when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with criminal action, unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.[10]

The petitioner is correct in stating that there being no reservation, waiver, nor prior institution of the civil aspect in Criminal Case No. 00-1705, it follows that the civil aspect arising from Grave Threats is deemed instituted with the criminal action, and, hence, the private prosecutor may rightfully intervene to prosecute the civil aspect.

WHEREFORE, the Petition is GRANTED. The assailed Resolution and Order of the Regional Trial Court, Branch 116, Pasay City are REVERSED and SET ASIDE. The Metropolitan Trial Court, Branch 45, Pasay City is DIRECTED to ADMIT the Entry of Appearance of petitioner in Criminal Case No. 00-1705 as a private prosecutor under the direct control and supervision of the public prosecutor.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, Callejo, Sr., Chico-Nazario and Nachura, JJ. we concur.

[1] Entitled, *People of the Philippines v. Alberto Mina*. [2] 211 Phil. 373, 378 (1983). [3] Rollo, p. 26.

[4] Rollo, pp. 7-9.[5] *United Laboratories, Inc. v. Isip*, G.R. No. 163858, June 28, 2005, 461 SCRA 574, 593; *Ark Travel Express, Inc. v. Abrogar*, G.R. No. 137010, August 29, 2003, 410 SCRA 148, 157.

[6] 273 SCRA xi.

[7] *Id.* at xiii-xiv.[8] See *Bulacan v. Torcino*, G.R. No. L-44388, January 30, 1985, 134 SCRA 252, 257-258

[9] *Sanchez v. Far East Bank and Trust Co.*, G.R. No. 155309, November 15, 2005, 475 SCRA 97, 111.

[10] *Chua v. Court of Appeals*, G.R. No. 150793, November 19, 2004, 443 SCRA 259, 267-268.

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