

**CONRADO BANAL III, PETITIONER, VS. HON. DELIA H. PANGANIBAN,
IN HER CAPACITY AS PRESIDING JUDGE OF RTC-MAKATI, BRANCH
64, MA. TERESA G. WINTERNITZ, CRISTINA G. FEIBEL, RAQUEL L....**

G.R. NO. 167474. November 15, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari[1] under Rule 45 of the Rules of Court assails the October 15, 2004 Decision[2] and the March 17, 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 73017, finding no grave of abuse of discretion attended the June 14, 2002 Order issued by Judge Delia H. Panganiban of the Regional Trial Court (RTC) of Makati City, Branch 64, recalling her Order dated April 9, 2002.

The antecedent facts show that a complaint was filed by respondents, Ma. Teresa G. Winternitz,[4] Cristina G. Feibel, and Raquel L. Gonzalez as officers of Welbilt Construction Corporation and Wack Wack Condominium Corporation, against petitioner Conrado R. Banal III for his articles entitled "House of the Rising Sun" and "Heist Cold Beer!", which appeared in petitioner's "Breaktime" column in the August 1, 2000 and August 12, 2000 issues of the Philippine Daily Inquirer, respectively.

Thereafter, six informations for libel were filed in the RTC of Makati City, Branch 64 docketed as Criminal Cases Nos. 01-693 – 01-698, entitled People of the Philippines v. Conrado R. Banal III, et al.[5] Except for the name of the parties and the article written, the six informations are similarly worded, to wit:

The undersigned Prosecutor accuses CONRADO R. BANAL III and SYLVIA G. CANCIO of the crime of Libel, committed as follows:

That on or about the 1[st] day of August 2000 in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with accused CONRADO R. BANAL III acting in his capacity as being then the columnist and writer in the newspaper column "Breaktime" of the Philippine Daily Inquirer, which is published in English in the City of Makati, Metro Manila, Philippines and of general circulation in the Philippines and abroad, and with accused SYLVIA G. CANCIO acting as the source of the defamatory information, with the intention of attacking the honesty, virtue and reputation of MARIA TERESA G. WINTERNITZ and for the purpose of exposing her to public hatred, contempt and ridicule, then and there willfully, unlawfully and feloniously wrote, composed and published and permitted and caused to be written, composed and published in the August 01, 2000 issue of the said newspaper an injurious and defamatory article relative to and concerning the person of said MARIA TERESA G. WINTERNITZ, which article is in words as follows:

....

That the article aforequoted had for its object to insinuate and made it understood, as was in effect understood and interpreted by the public who read it, that the MARIA TERESA who is one of the three Gonzalez

daughters can be no other than the said MARIA G. WINTERNITZ, in this manner transmitting maliciously and intentionally to the public the impression that the said MARIA G. WINTERNITZ, as a nominal stockholder, member of the Board of Directors and officer of the Welbilt Construction Corporation and Wack Wack Condominium Corporation, developer and owner respectively of the Wack Wack Apartments, was engaged, together with her two sisters and parents, in anomalous, unlawful and illegal transactions and other wrongdoings involving the sale and resale, occupancy, possession and ownership by unit buyers....[6]

Upon arraignment, petitioner entered a plea of not guilty. On February 11, 2002, he filed a Motion to Quash the six informations on the ground that the trial court lacked jurisdiction over the offense charged.[7] He argued that the informations failed to allege the actual residence of the complainant at the time of the commission of the offense or the place where the allegedly libelous article was printed and first published.

In an Order dated April 9, 2002,[8] the trial court granted the motion to quash and dismissed the cases for lack of jurisdiction. It held that the six informations which uniformly alleged that the article is "published in English in the City of Makati, Metro Manila, Philippines and of general circulation in the Philippines and abroad", do not meet the requirement that the information must allege that the libelous article is printed and first published in Makati City or that the offended party is a resident of Makati City.

On May 1, 2002, respondents filed an Omnibus Motion for Reconsideration of the dismissal of the informations and moved that an amendment of the informations be allowed.[9] Respondents averred that the failure to specifically allege that the libelous articles were printed and first published in Makati was merely a formal defect and can be cured by amendment.

The trial court held that the amendment in the information is formal because it will not prevent the accused from questioning the jurisdiction of the court to try the case, nor will it affect his defense. Petitioner can always challenge the jurisdiction by proving the negative of the allegations in the information, such that the libelous articles were not printed and first published in Makati City.[10]

Petitioner thus filed a petition for certiorari and prohibition under Rule 65 of the Rules of Court before the Court of Appeals alleging that the June 14, 2002 Order recalling the April 9, 2002 Order was issued with grave abuse of discretion. The Court of Appeals dismissed the petition.

The Court of Appeals found that the trial court did not gravely abuse its discretion as the questioned order merely sought to correct the earlier order allowing the dismissal of the six informations, in accord with law and prevailing jurisprudence. The amendment sought is one of form which is allowable even after arraignment of the accused. The additional statement merely clarified, in the terms more acceptable to petitioner that the libelous article was printed and first published in Makati City and to further bolster that, indeed, the crime charged was committed within respondent court's jurisdiction.[11]

Petitioner's motion for reconsideration was denied, hence, this petition on the following grounds:

(A)

WHETHER OR NOT THE FAILURE OF CRIMINAL INFORMATIONS FOR LIBEL TO ALLEGE THE PLACE WHERE THE OFFENDED PARTIES ACTUALLY RESIDE AT THE TIME OF THE COMMISSION OF THE OFFENSES OR THE PLACE WHERE THE ALLEGEDLY LIBELOUS PUBLICATIONS WERE PRINTED AND FIRST PUBLISHED, EITHER OF WHICH ALLEGATION IS REQUIRED UNDER ART. 360 OF THE REVISED PENAL CODE TO CONFER JURISDICTION UPON THE COURT, IS A SUFFICIENT GROUND FOR THE QUASHAL OF THE CRIMINAL INFORMATIONS.

(B)

WHETHER OR NOT AN AMENDMENT TO THE CRIMINAL INFORMATION THAT WILL CONFER JURISDICTION UPON THE TRIAL COURT (THAT EARLIER RULED THAT IT HAS NO JURISDICTION OVER THE OFFENSES CHARGED) IS A SUBSTANTIAL AMENDMENT THAT IS NOT ALLOWED AFTER THE ACCUSED HAD BEEN ARRAIGNED.

(C)

WHETHER OR NOT THE RESPONDENT TRIAL COURT THAT HAS EARLIER RULED THAT IT HAS NO JURISDICTION OVER THE OFFENSES CHARGED HAS AUTHORITY TO GRANT LEAVE TO AMEND THE CRIMINAL INFORMATION, WHICH AMENDMENTS SEEK TO CONFER UPON THE RESPONDENT TRIAL COURT JURISDICTION OVER THE OFFENSES CHARGED.[12]

The issues for resolution are as follows: (1) whether the RTC of Makati City has jurisdiction over the offense; (2) whether the amendment was formal or substantial; (3) whether the trial court committed grave abuse of discretion in recalling the earlier order granting the quashal of the informations and allowing the informations to be amended.

Petitioner avers that the allegations in the informations are insufficient to confer jurisdiction on the RTC of Makati City over the crime of libel charged in the informations. He claims that the Court of Appeals mistakenly relied on Section 6, Rule 110 of the Rules of Court because said provision is a statement of a general rule, which is not applicable in libel cases. He insists that the applicable rule on venue and jurisdiction in libel cases is Article 360 of the Revised Penal Code.

Moreover, petitioner claims that the amendment made by the prosecution seeks to rectify a fatal omission in the original informations by alleging facts which establish the propriety of the venue of the action. He submits that an omitted or defective allegation as to venue is a matter of substance which cannot be corrected by amendment. These substantial amendments are not allowed after the accused has been arraigned. Thus, the amendment allowed by the trial court was grossly improper and was beyond its authority or jurisdiction.

Respondents on the other hand assert that petitioner's argument that Section 6, Rule 110 of the Rules of Court is inapplicable because the law on libel specifically requires a certain formula (i.e., "printed and first published"), is devoid of merit. They claim that what matters is the substance of the allegations in the complaint. It is not required that the information allege verbatim the elements of the felony, to wit, that the libelous publications were "printed and first published" in Makati City, before jurisdiction is vested in the trial court.

Furthermore, respondents argue that the amendments made were one of form. The original informations already provided the necessary allegations to vest jurisdiction with the trial court. The amendment sought will not alter the defense of the accused nor will it prevent him from questioning the jurisdiction of the trial court to try the case. The amendments merely clarified and emphasized the jurisdiction already acquired by the trial court.

The petition lacks merit.

Paragraph 3, Article 360 of the Revised Penal Code states:

The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the Court of First Instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: Provided, however, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in

the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published ...

The portion of the original information reads:

That on or about the 1[st] day of August 2000 in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with accused CONRADO R. BANAL III acting in his capacity as being then the columnist and writer in the newspaper column "Breaktime" of the Philippine Daily Inquirer, which is published in English in the City of Makati, Metro Manila, Philippines and of general circulation in the Philippines and abroad,...[13]

Thus, it was clearly stated in the information that the newspaper is published in Makati City but circulated throughout the country, which allegation accordingly vests jurisdiction over the offense charged in the RTC of Makati City.

Moreover, the amendment in the informations was one of form. Section 14, Rule 110 of the Rules of Court provides that a complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused. In the instant case, the amendment was done after petitioner's arraignment and with prior leave of court. The amendment which states, "That the libelous article above-quoted was printed and first published in the City of Makati, more particularly at 3817 Mascardo street, Makati City and/or at 1098 Chino Roces Avenue (formerly Pasong Tamo) corner Yague and Mascardo Streets, Makati City,"[14] is merely formal.

As laid down by this Court, an amendment is only in form when it merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which, therefore, adds nothing essential for conviction for the crime charged.[15] In the case of *People v. Casey*,[16] we laid down the test in determining whether an amendment is a matter of form or substance, thus:

The test as to whether a defendant is prejudiced by the amendment of an information has been said to be whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. A look into Our jurisprudence on the matter shows that an amendment to an information introduced after the accused has pleaded not guilty thereto, which does not change the nature of the crime alleged therein, does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance – not prejudicial to the accused, and therefore, not prohibited by Section 13, Rule 110 (now Section 14) of the Revised Rules of Court.[17]

We find that the original information is sufficient in form. Allowing the amendment does not alter the defense of the accused. Indeed, it only states with precision that which is already contained in the original information.

Having ruled that the RTC of Makati City has jurisdiction, we find that no grave abuse of discretion can be imputed against respondent Judge Panganiban for allowing the formal amendment of the informations. We have

previously ruled that grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.[18] By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[19]

WHEREFORE, the petition is DENIED. The October 15, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 73017 and its March 17, 2005 Resolution, are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 9-39.

[2] Id. at 41-51. Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang.

[3] Id. at 53-55.

[4] Referred to as Maria Teresa G. Winternitz in some parts of the records.

[5] Rollo, pp. 58-81.

[6] Id.

[7] Id. at 82-88.

[8] Id. at 89-93. Penned by Judge Delia H. Panganiban.

[9] Id. at 94-100.

[10] Id. at 204.

[11] Id.

[12] Id. at 16-17.

[13] Id. at 58.

[14] Id. at 142.

[15] Pobleto v. Sandoval, G.R. No. 150610, March 25, 2004, 426 SCRA 346, 356.

[16] L-30146, February 24, 1981, 103 SCRA 21.

[17] Id. at 31-32.

[18] Choa v. Choa, 441 Phil. 175, 192 (2002).

[19] Hegerty v. Court of Appeals, G.R. No. 154920, August 15, 2003, 409 SCRA 285, 289.

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