

**FRANCISCO Q. DUQUE, HUGO S. ESTRADA, MARIA C. MAGSANO AND
RESTITUTO C. BASA, PETITIONERS, VS. HON. AMADO S. SANTIAGO,
JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN,
EMETERI...**

G.R. No. 16916. November 29, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of certiorari filed on 16 May 1960 to annul and set aside an order of the Court of First Instance of Pangasinan dated 3 February 1960 (Annex C) in criminal case No. U-335 and for a writ of preliminary injunction to restrain the respondent judge from proceeding with the arraignment of the petitioners and the trial of said criminal case pending final judgment on this petition.

On 18 July 1959 the respondent Provincial Fiscal of Pangasinan filed an information charging the petitioners with libel upon complaint by the respondent Provincial Governor Conrado F. Estrella (No. U-335 and praying for damages in the sum of P200,000 (Annex A).

On 31 July 1960 the petitioners filed an Omnibus Motion (Annex B) praying, for reasons therein stated, for transfer of the case from the Urdueta branch to the Dagupan branch of the court, for the quashing of the information, on the ground that the facts charged therein do not constitute the offense of libel since the published parts of the article claimed to be libelous are but a fair and true report of the acceptance speech delivered by then candidate Francisco Q. Duque, one of the herein petitioners, and an appraisal and a just comment or a candid criticism of past official acts of the respondent Conrado F. Estrella in connection with his announced intention to run for reelection as governor of Pangasinan and for that reason the above-mentioned published parts of the article are or constitute a privileged communication under article 354 of the Revised Penal Code; and praying further, in the alternative, for a bill of particulars specifying the time, place and occasion of the alleged public utterances and conversation between the petitioners Francisco Q. Duque and Restituto Basa, and at the same time denying the truth of the charges and the part allegedly taken therein by the petitioner Francisco Q. Duque; and setting up a counterclaim for damages against the respondents Emeteno M. Castañeda and Conrado F. Estrella for the malicious filing of the information against the petitioners. On 20 August 1959 the respondents filed an answer to the petitioners' omnibus motion and claim for damages (Annex 2).

After hearing held on 27 August 1959 and the parties had filed their respective memoranda, the court presided over by the respondent judge entered an order dated 3 February 1960 denying the petitioners' motion to quash for the reason that the published parts of the article are not privileged and even if they were so, still they would not be a legal ground for the quashing of the information, because, in the opinion of the respondent judge who presided over the court, the privileged character of the allegedly libelous publication should be set up as a defense. The prayer in the motion for a bill of particulars was also denied for lack of merit, but the petition of both the public and private prosecution for the striking out of that part of the omnibus motion regarding the claim for damages

based on malicious prosecution was granted. The court further held that the information does, not suffer from the infirmity of duplicity of offenses, charged, a point not raised in the motion but most likely in the course of the argument.

Whereupon, the respondent judge directed the clerk of court to set the arraignment of the defendants, the herein petitioners, at the earliest available date in the calendar of court (Annex C).

On 2 March 1960 the petitioners moved for reconsideration of the order denying the motion to quash, reiterating the reasons and argument advanced in the omnibus motion and claiming that the information charges both libel and slander (oral defamation) contrary to section 12, Rule 106, Rules of Court, for it charges that the accused Duque and Basa, before the publication of the libel complained of, uttered the substance of the libelous article publicly and privately. An objection to the petitioners' motion for reconsideration was filed by the respondents and after consideration of the arguments advanced by both parties, on 30 April 1960 the motion for reconsideration was denied, the court getting the arraignment of the accused for 16 May 1960 at 8:00 a.m.

On 10 June 1960, upon the petitioners' filing of a bond in the sum of P200, a writ of preliminary injunction was issued by this court restraining the respondent judge of the Court of First Instance of Pangasinan from proceeding with the arraignment of the herein petitioners and the trial of the criminal case for libel (U-335) until further orders.

The petitioners contend that the information should be quashed, because it does not charge an offense, or if it does, the allegedly libelous publication is a fair comment on a matter that concerns public interest which is privileged and comes under the protection provided for in article 354 of the Revised Penal Code, invoking the rule laid down in the case of *People vs. Bustos*, 37 Phil. 731. They assert that protection afforded by law to privileged communications cannot be torn up by evidence and for that reason a criminal action for libel on such communication would not and does not lie.

On the other hand, the respondents maintain that the petitioners' contention is untenable, because they claim that even if the publication were a privileged communication, the privileged character of the publication is not a legal ground for the quashal of the information, for it is a matter of defense. They argue that assuming that the publication is privileged, it does not mean that it is not actionable for the privileged character simply does away with the presumption of malice which the plaintiff has to prove in such a case.[1]

Whether comment made by the petitioner (Duque) is fair or not on matters of public interest, or he was prompted by personal ill-will or spite and caused its publication not merely in response to duty but just to injure the reputation of respondent Governor Estrella, or justifiable grounds for such comment on the person, office and reputation of respondent Governor Estrella exist or do not exist, are matters which may only be determined after the trial of the petitioners.

Although a publication which imputes political corruption; or the use of political influence or privileges for pecuniary gain is libelous per se (53 C.J.S., Sec. 28, p. 69), still as already adverted to above, since the privileged character or nature destroys the presumption of malice, the onus of proving malice is on the plaintiff, and whether malice of defendant exists the same can only be proved after trial of the case on the merits.[2]

The next point to determine is whether the information charges more than one offense. The information charges the petitioners with the crime of libel committed on or About 28 June 1959. The petitioners maintain that the information charges both libel and slander, because after setting out the published parts of the article claimed to be libelous the information further alleges and charges—

That to make effective their scheme and premeditated plan to dishonor, discredit and besmirch the good name

and reputation of the herein complainant, accused Francisco Q. Duque and Restitute C. Basa, before the circulation of the libel contained in the aforementioned issue of the Pangasinan Courier, and to prepare the ground for the same, uttered and mentioned the substance of the said libelous article quoted above in public and also in private conversations; * * *.

Such allegations are made to strengthen the charge of malice which is necessary to support a conviction of the crime of libel.

Be that as it may, the orders complained of entered by the respondent judge in the exercise of its power and jurisdiction cannot be deemed to be, and does not amount to, a grave abuse of discretion to entitle the petitioners to the writ prayed for by them. The denial of a motion to quash on the ground that the publication of the parts of an article claimed to be libelous is privileged and that the information charges two offenses is interlocutory and cannot be appealed. Whether the publication is privileged or not and the information suffers from the infirmity of duplicity, the trial court will have to pass upon them and if passed upon adversely to the petitioners the same may be raised and reviewed on appeal.

The writ prayed for is denied. The writ of preliminary injunction is dissolved. No costs shall be taxed.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Article 354, Revised Penal Code; Lu Chu Sing vs. Lu Tiong Gui, 76 Phil. 669.

[2] U.S. vs. Cañete, 38 Phil. 253; also 33 Am. Jur., pp. 124, 126.

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