

WONINA M. BONIFACIO, JOCELYN UPANO, VICENTE ORTUOSTE AND JOVENCIO PERECHE, SR., PETITIONERS, VS. REGIONAL TRIAL COURT OF MAKATI, BRANCH 149, AND JESSIE JOHN P. GIMENEZ, RESPONDENTS.

G.R. No. 184800. May 05, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Via a petition for Certiorari and Prohibition, petitioners Wonina M. Bonifacio, et al. assail the issuances of Branch 149 of the Regional Trial Court (RTC) of Makati (public respondent) - Order[1] of April 22, 2008 which denied their motion to quash the Amended Information indicting them for libel, and Joint Resolution[2] of August 12, 2008 denying reconsideration of the first issuance.

Private respondent Jessie John P. Gimenez[3] (Gimenez) filed on October 18, 2005, on behalf of the Yuchengco Family ("in particular," former Ambassador Alfonso Yuchengco and Helen Y. Dee (Helen) and of the Malayan Insurance Co., Inc. (Malayan),[4] a criminal complaint,[5] before the Makati City Prosecutor's Office, for thirteen (13) counts of libel under Article 355 in relation to Article 353 of the Revised Penal Code (RPC) against Philip Piccio, Mia Gatmaytan and Ma. Anabella Relova Santos, who are officers of Parents Enabling Parents Coalition, Inc. (PEPCI), John Joseph Gutierrez, Jeselyn Upano, Jose Dizon, Rolanda Pareja, Wonina Bonifacio, Elvira Cruz, Cornelio Zafra, Vicente Ortueste, Victoria Gomez Jacinto, Jurencio Pereche, Ricardo Loyares and Peter Suchianco, who are trustees of PEPCI, Trennie Monsod, a member of PEPCI (collectively, the accused), and a certain John Doe, the administrator of the website www.pepcoalition.com.

PEPCI appears to have been formed by a large group of disgruntled planholders of Pacific Plans, Inc. (PPI) - a wholly owned subsidiary of Great Pacific Life Assurance Corporation, also owned by the Yuchengco Group of Companies (YGC) - who had previously purchased traditional pre-need educational plans but were unable to collect thereon or avail of the benefits thereunder after PPI, due to liquidity concerns, filed for corporate rehabilitation with prayer for suspension of payments before the Makati RTC.

Decrying PPI's refusal/inability to honor its obligations under the educational pre-need plans, PEPCI sought to provide a forum by which the planholders could seek redress for their pecuniary loss under their policies by maintaining a website on the internet under the address of www.pepcoalition.com.

Gimenez alleged that PEPCI also owned, controlled and moderated on the internet a blogspot[6] under the website address www.pacificnoplan.blogspot.com, as well as a yahoo e-group[7] at no2pep2010@yahoogroups.com. These websites are easily accessible to the public or by anyone logged on to the internet.

Gimenez further alleged that upon accessing the above-stated websites in Makati on various dates from August 25 to October 2, 2005, he "was appalled to read numerous articles [numbering 13], maliciously and recklessly caused

to be published by [the accused] containing highly derogatory statements and false accusations, relentlessly attacking the Yuchengco Family, YGC, and particularly, Malayan." [8] He cited an article which was posted/published on www.pepcoalition.com on August 25, 2005 which stated:

Talagang naisahan na naman tayo ng mga Yuchengcos. Nangyari na ang mga kinatatakutan kong pagbagsak ng negotiation because it was done prematurely since we had not file any criminal aspect of our case. What is worse is that Yuchengcos benefited much from the nego. x x x . That is the fact na talagang hindi dapat pagtiwalaan ang mga Yuchengcos.

LET'S MOVE TO THE BATTLEFIELD. FILE THE CRIMINAL CASES IN COURT, BSP AND AMLC AND WHEREVER. Pumunta tayong muli sa senado, congreso, RCBC Plaza, and other venues to air our grievances and call for boycott ng YGC. Let us start within ourselves. Alisin natin ang mga investments and deposits natin sa lahat ng YGC and I mean lahat and again convince friends to do the same. Yung mga nanonood lang noon ay dapat makisali na talaga ngayon specially those who joined only after knowing that there was a negotiation for amicable settlements.

FOR SURE MAY TACTICS PA SILANG NAKABASTA SA ATIN. LET US BE READY FOR IT BECAUSE THEY HAD SUCCESSFULLY LULL US AND THE NEXT TIME THEY WILL TRY TO KILL US NA. x x x [9] (emphasis in the original)

By Resolution of May 5, 2006, [10] the Makati City Prosecutor's Office, finding probable cause to indict the accused, filed thirteen (13) separate Informations [11] charging them with libel. The accusatory portion of one Information, docketed as Criminal Case No. 06-876, which was raffled off to public respondent reads:

That on or about the 25[th] day of August 2005 in Makati City, Metro Manila, Philippines, a place within the jurisdiction of the Honorable Court, the above-named accused, being then the trustees of Parents Enabling Parents Coalition and as such trustees they hold the legal title to the website www.pepcoalition.com which is of general circulation, and publication to the public conspiring, confederating and mutually helping with one another together with John Does, did then and there willfully, unlawfully and feloniously and publicly and maliciously with intention of attacking the honesty, virtue, honor and integrity, character and reputation of complainant Malayan Insurance Co. Inc., Yuchengco Family particularly Ambassador Alfonso Yuchengco and Helen Dee and for further purpose exposing the complainant to public hatred and contempt published an article imputing a vice or defect to the complainant and caused to be composed, posted and published in the said website www.pepcoalition.com and injurious and defamatory article as follows:

Talagang naisahan na naman tayo ng mga Yuchengcos. Nangyari na ang mga kinatatakutan kong pagbagsak ng negotiation. x x x x x x x x

For sure may tactics pa silang nakabasta sa atin. Let us be ready for it because they had successfully lull us and the next time they will try to kill us na. x x x

A copy of the full text of the foregoing article as published/posted in www.pepcoalition.com is attached as Annex "F" of the complaint.

That the keyword and password to be used in order to post and publish the above defamatory article are known to the accused as trustees holding legal title to the above-cited website and that the accused are the ones responsible for the posting and publication of the defamatory articles that the article in question was posted and published with the object of the discrediting and ridiculing the complainant before the public.

CONTRARY TO LAW.[12]

Several of the accused appealed the Makati City Prosecutor's Resolution by a petition for review to the Secretary of Justice who, by Resolution of June 20, 2007,[13] reversed the finding of probable cause and accordingly directed the withdrawal of the Informations for libel filed in court. The Justice Secretary opined that the crime of "internet libel" was non-existent, hence, the accused could not be charged with libel under Article 353 of the RPC.[14]

Petitioners, as co-accused,[15] thereupon filed on June 6, 2006, before the public respondent, a Motion to Quash[16] the Information in Criminal Case No. 06-876 on the grounds that it failed to vest jurisdiction on the Makati RTC; the acts complained of in the Information are not punishable by law since internet libel is not covered by Article 353 of the RPC; and the Information is fatally defective for failure to designate the offense charged and the acts or omissions complained of as constituting the offense of libel.

Citing *Macasaet v. People*,[17] petitioners maintained that the Information failed to allege a particular place within the trial court's jurisdiction where the subject article was printed and first published or that the offended parties resided in Makati at the time the alleged defamatory material was printed and first published.

By Order of October 3, 2006,[18] the public respondent, albeit finding that probable cause existed, quashed the Information, citing *Agustin v. Pamintuan*. [19] It found that the Information lacked any allegations that the offended parties were actually residing in Makati at the time of the commission of the offense as in fact they listed their address in the complaint-affidavit at Yuchengco Tower in Binondo, Manila; or that the alleged libelous article was printed and first published in Makati.

The prosecution moved to reconsider the quashal of the Information,[20] insisting that the Information sufficiently conferred jurisdiction on the public respondent. It cited *Banal III v. Panganiban*[21] which held that the Information need not allege verbatim that the libelous publication was "printed and first published" in the appropriate venue. And it pointed out that Malayan has an office in Makati of which Helen is a resident. Moreover, the prosecution alleged that even assuming that the Information was deficient, it merely needed a formal amendment.

Petitioners opposed the prosecution's motion for reconsideration, contending, *inter alia*, that since venue is jurisdictional in criminal cases, any defect in an information for libel pertaining to jurisdiction is not a mere matter of form that may be cured by amendment.[22]

By Order of March 8, 2007,[23] the public respondent granted the prosecution's motion for reconsideration and accordingly ordered the public prosecutor to "amend the Information to cure the defect of want of venue."

The prosecution thereupon moved to admit the Amended Information dated March 20, 2007,[24] the accusatory portion of which reads:

That on or about the 25[th] day of August 2005 in Makati City, Metro Manila, Philippines, a place within the jurisdiction of the Honorable Court, the above-named accused, being then the trustees of Parents Enabling Parents Coalition and as such trustees they hold the legal title to the website www.pepcoalition.com which is of general circulation, and publication to the public conspiring, confederating together with John Does, whose true names, identities and present whereabouts are still unknown and all of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously and publicly and maliciously with intention of attacking the honesty, virtue, honor and integrity, character and reputation of complainant Malayan Insurance Co. Inc., Yuchengco Family particularly Ambassador Alfonso Yuchengco and Helen Dee and for further purpose exposing the complainant to public hatred and contempt published an article imputing a vice or defect to the complainant and caused to be composed, posted and published in the said website

www.pepcoalition.com, a website accessible in Makati City, an injurious and defamatory article, which was first published and accessed by the private complainant in Makati City, as follows:

x x x x (emphasis and underscoring in the original; italics supplied)

Petitioners moved to quash the Amended Information[25] which, they alleged, still failed to vest jurisdiction upon the public respondent because it failed to allege that the libelous articles were "printed and first published" by the accused in Makati; and the prosecution erroneously laid the venue of the case in the place where the offended party accessed the internet-published article.

By the assailed Order of April 22, 2008, the public respondent, applying Banal III, found the Amended Information to be sufficient in form.

Petitioners' motion for reconsideration[26] having been denied by the public respondent by Joint Resolution of August 12, 2008, they filed the present petition for Certiorari and Prohibition faulting the public respondent for:

- ... NOT FINDING THAT THE ACTS ALLEGED IN THE INFORMATION ARE NOT PUNISHABLE BY LAW;
- ... ADMITTING AN AMENDED INFORMATION WHOSE JURISDICTIONAL ALLEGATIONS CONTINUES TO BE DEFICIENT; and
- ...NOT RULING THAT AN AMENDMENT IN THE INFORMATION FOR THE PURPOSE OF CURING JURISDICTIONAL DEFECTS IS ILLEGAL.[27]

With the filing of Gimenez's Comment[28] to the petition, the issues are: (1) whether petitioners violated the rule on hierarchy of courts to thus render the petition dismissible; and (2) whether grave abuse of discretion attended the public respondent's admission of the Amended Information.

The established policy of strict observance of the judicial hierarchy of courts,[29] as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court.[30] A regard for judicial hierarchy clearly indicates that petitions for the issuance of extraordinary writs against first level courts should be filed in the RTC and those against the latter should be filed in the Court of Appeals.[31] The rule is not iron-clad, however, as it admits of certain exceptions.

Thus, a strict application of the rule is unnecessary when cases brought before the appellate courts do not involve factual but purely legal questions.[32]

In the present case, the substantive issue calls for the Court's exercise of its discretionary authority, by way of exception, in order to abbreviate the review process as petitioners raise a pure question of law involving jurisdiction in criminal complaints for libel under Article 360 of the RPC -whether the Amended Information is sufficient to sustain a charge for written defamation in light of the requirements under Article 360 of the RPC, as amended by Republic Act (RA) No. 4363, reading:

Art. 360. Persons responsible.— Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The criminal action 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 x x x. (emphasis and underscoring supplied)

Venue is jurisdictional in criminal actions such that the place where the crime was committed determines not only the venue of the action but constitutes an essential element of jurisdiction.[33] This principle acquires even greater import in libel cases, given that Article 360, as amended, specifically provides for the possible venues for the institution of the criminal and civil aspects of such cases.

In *Macasaet*,^[34] the Court reiterated its earlier pronouncements in *Agbayani v. Sayo*^[35] which laid out the rules on venue in libel cases, viz:

For the guidance, therefore, of both the bench and the bar, this Court finds it appropriate to reiterate our earlier pronouncement in the case of *Agbayani*, to wit:

In order to obviate controversies as to the venue of the criminal action for written defamation, the complaint or information should contain allegations as to whether, at the time the offense was committed, the offended party was a public officer or a private individual and where he was actually residing at that time. Whenever possible, the place where the written defamation was printed and first published should likewise be alleged. That allegation would be a *sine qua non* if the circumstance as to where the libel was printed and first published is used as the basis of the venue of the action. (emphasis and underscoring supplied)

It becomes clear that the venue of libel cases where the complainant is a private individual is limited to only either of two places, namely: 1) where the complainant actually resides at the time of the commission of the offense; or 2) where the alleged defamatory article was printed and first published. The Amended Information in the present case opted to lay the venue by availing of the second. Thus, it stated that the offending article "was first published and accessed by the private complainant in Makati City." In other words, it considered the phrase to be equivalent to the requisite allegation of printing and first publication.

The insufficiency of the allegations in the Amended Information to vest jurisdiction in Makati becomes pronounced upon an examination of the rationale for the amendment to Article 360 by RA No. 4363. *Chavez v. Court of Appeals*^[36] explained the nature of these changes:

Agbayani supplies a comprehensive restatement of the rules of venue in actions for criminal libel, following the amendment by Rep. Act No. 4363 of the Revised Penal Code:

"Article 360 in its original form provided that the venue of the criminal and civil actions for written defamations is the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed. Article 360 originally did not specify the public officers and the courts that may conduct the preliminary investigation of complaints for libel.

Before article 360 was amended, the rule was that a criminal action for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where it was written or printed (*People v. Borja*, 43 Phil. 618). Under that rule, the criminal action is transitory and the injured party has a choice of venue.

Experience had shown that under that old rule the offended party could harass the accused in a libel case by

laying the venue of the criminal action in a remote or distant place.

Thus, in connection with an article published in the Daily Mirror and the Philippine Free Press, Pio Pedrosa, Manuel V. Villareal and Joaquin Roces were charged with libel in the justice of the peace court of San Fabian, Pangasinan (*Amansec v. De Guzman*, 93 Phil. 933).

To forestall such harassment, Republic Act No. 4363 was enacted. It lays down specific rules as to the venue of the criminal action so as to prevent the offended party in written defamation cases from inconveniencing the accused by means of out-of-town libel suits, meaning complaints filed in remote municipal courts (Explanatory Note for the bill which became Republic Act No. 4363, Congressional Record of May 20, 1965, pp. 424-5; *Time, Inc. v. Reyes*, L-28882, May 31, 1971, 39 SCRA 303, 311).

x x x x (emphasis and underscoring supplied)

Clearly, the evil sought to be prevented by the amendment to Article 360 was the indiscriminate or arbitrary laying of the venue in libel cases in distant, isolated or far-flung areas, meant to accomplish nothing more than harass or intimidate an accused. The disparity or unevenness of the situation becomes even more acute where the offended party is a person of sufficient means or possesses influence, and is motivated by spite or the need for revenge.

If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications. This pre-condition becomes necessary in order to forestall any inclination to harass.

The same measure cannot be reasonably expected when it pertains to defamatory material appearing on a website on the internet as there would be no way of determining the situs of its printing and first publication. To credit Gimenez's premise of equating his first access to the defamatory article on petitioners' website in Makati with "printing and first publication" would spawn the very ills that the amendment to Article 360 of the RPC sought to discourage and prevent. It hardly requires much imagination to see the chaos that would ensue in situations where the website's author or writer, a blogger or anyone who posts messages therein could be sued for libel anywhere in the Philippines that the private complainant may have allegedly accessed the offending website.

For the Court to hold that the Amended Information sufficiently vested jurisdiction in the courts of Makati simply because the defamatory article was accessed therein would open the floodgates to the libel suit being filed in all other locations where the peopcoalition website is likewise accessed or capable of being accessed.

Respecting the contention that the venue requirements imposed by Article 360, as amended, are unduly oppressive, the Court's pronouncements in *Chavez*[37] are instructive:

For us to grant the present petition, it would be necessary to abandon the *Agbayani* rule providing that a private person must file the complaint for libel either in the place of printing and first publication, or at the complainant's place of residence. We would also have to abandon the subsequent cases that reiterate this rule in *Agbayani*, such as *Soriano*, *Agustin*, and *Macasaet*. There is no convincing reason to resort to such a radical action. These limitations imposed on libel actions filed by private persons are hardly onerous, especially as they still allow such persons to file the civil or criminal complaint in their respective places of residence, in which situation there is no need to embark on a quest to determine with precision where the libelous matter was printed and first published.

(Emphasis and underscoring supplied.)

IN FINE, the public respondent committed grave abuse of discretion in denying petitioners' motion to quash the Amended Information.

WHEREFORE, the petition is GRANTED. The assailed Order of April 22, 2008 and the Joint Resolution of August 12, 2008 are hereby SET ASIDE. The Regional Trial Court of Makati City, Br. 149 is hereby DIRECTED TO QUASH the Amended Information in Criminal Case No. 06-876 and DISMISS the case.

SO ORDERED.

Puno, (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur

[1] Issued by Presiding Judge Cesar Untalan; rollo, pp. 51-52.

[2] Id. at 71-72.

[3] President of the Philippine Integrated Advertising Agency, Inc. (PIAA), the advertising arm of the Yuchengco Group of Companies (YGC), tasked with preserving the image and good name of the YGC as well as the name and reputation of the Yuchengco Family.

[4] A domestic corporation with offices in Binondo, Manila and belonging to the YGC engaged in the non-life insurance protection business which includes fire, marine, motorcar, miscellaneous casualty and personal accident, and surety.

[5] Rollo, pp. 269-293.

[6] A blog is a type of website usually maintained by an individual with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order and many blogs provide commentary or news on a particular subject; vide <http://en.wikipedia.org/wiki/Blog> (visited: March 24, 2010).

[7] The term Groups refers to an Internet communication tool which is a hybrid between an electronic mailing list and a threaded internet forum where messages can be posted and read by e-mail or on the Group homepage, like a web forum. Members can choose whether to receive individual, daily digest or Special Delivery e-mails, or they can choose to read Group posts on the Group's web site. Groups can be created with public or member-only access; vide http://en.wikipedia.org/wiki/Yahoo_Groups (visited: March 24, 2010).

[8] Rollo, p. 274.

[9] Id. at 352.

[10] Signed by 1[st] Assistant City Prosecutor Romulo Nanola, id. at 98-108.

[11] Criminal Case Nos. 06-873 - 885, id. at 467-503.

[12] Id. at 119-121.

[13] Issued by Justice Secretary Raul M. Gonzalez, id. at 110-118.

[14] The Yuchengcos' motion for reconsideration of the Justice Secretary's aforesaid resolution has yet to be resolved.

[15] The RTC granted the motion of the accused to post bail on recognizance by Order of May 31, 2006.

[16] Rollo, pp. 122-155.

- [17] G.R. No. 156747, February 23, 2005, 452 SCRA 255.
- [18] Issued by Presiding Judge Cesar Untalan, rollo, pp. 156-163.
- [19] G. R. No. 164938, August 22, 2005, 467 SCRA 601.
- [20] Rollo, pp. 590-605.
- [21] G. R. No. 167474, November 15, 2005, 475 SCRA 164.
- [22] Rollo, pp. 610-624.
- [23] Id. at 179-180.
- [24] Id. at 181-183.
- [25] Id. at 184-206.
- [26] Vide Motion for Reconsideration with Prayer to Cancel Arraignment, id. at 53-70.
- [27] Id. at 17.
- [28] Id. at 216-268.
- [29] Pacoy v. Cajigal, G.R. No. 157472, 28 September 2007, 534 SCRA 338, 346.
- [30] Sarsaba v. Vda. de Te, G.R. No. 175910, July 30, 2009, 594 SCRA 410.
- [31] Miaque v. Patag, G.R. Nos. 170609-13, January 30, 2009, 577 SCRA 394, 397 citing Chavez v. National Housing Authority, G.R. No. 164527, 15 August 2007, 530 SCRA 235, 285 citing People v. Cuaresma, G.R. No. 133250, 9 July 2002, 384 SCRA 152.
- [32] Chua v. Ang, G.R. No. 156164, September 4, 2009, 598 SCRA 229, 239.
- [33] Macasaet v. People, supra note 17 at 271; Lopez, et al. v. The City Judge, et al., G.R. No. L-25795, October 29, 1966, 18 SCRA 616.
- [34] Vide Macasaet v. People, supra note 17 at 273-274.
- [35] G.R. No. L-47880, April 30, 1979, 89 SCRA 699.
- [36] G.R. No. 125813, February 6, 2007, 514 SCRA 279, 285-286.
- [37] Vide note 36 at 291-292.

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