

ALFREDO P. MALIT, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, THE HON. JUDGE CARLOS C. OFILADA, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE CITY COURT OF CALOOCAN CITY, BRA...

G.R. No. 58681. May 31, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Petition for certiorari and prohibition to review the order of respondent Judge, dated February 20, 1981, denying petitioner's motion to quash in Criminal Case No. 126521, entitled: "People of the Philippines vs. Atty. Alfredo Malit", as well as the order of same respondent, dated May 5, 1981, which denied petitioner's motion for reconsideration.

It appears on record that herein petitioner was counsel of Miss Ruth Fernandez in an administrative case filed against her by Dr. Macaspac. At the hearing of the case on January 17, 1980, Dr. Macaspac identified certain exhibits on the witness stand. On cross-examination by herein petitioner, Atty. Malit, if she knew the person who "made" a certain exhibit, Dr. Macaspac evaded the question by saying she did not understand the word "made." Petitioner tried to explain by saying that it means "prepared." Notwithstanding, Dr. Macaspac would not answer and, instead, asked petitioner for clarification. This prompted Atty. Malit to say: "I doubt how did you become a Doctor." As a consequence, Dr. Macaspac instituted a complaint for slander against herein petitioner with the Fiscal's Office of Caloocan City.

On February 28, 1980, an information for unjust vexation docketed as Criminal Case No. 126521 was filed by Special Counsel Apolinario A. Exevea which reads:

"That on or about the 17th day of January, 1980 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused without any justifiable cause, did then and there willfully, unlawfully and feloniously vex and annoy one Corazon I. Macaspac, by then and there uttering the following remarks directly addressed to the latter:

'I DOUBT HOW DID YOU BECOME A DOCTOR'

to her great annoyance, vexation and disgust."

Petitioner filed a motion to quash on the ground that "the facts charged do not constitute an offense."

Respondent Judge denied the motion to quash, as well as the motion for reconsideration raising the ground that the court has no jurisdiction because the facts charged in the information are privileged communication.

It is the position of petitioner that the statement "I doubt how did you become a doctor" does not constitute an offense as it was uttered at the time he was conducting the cross-examination of Dr. Macaspac; that utterances made in the course of judicial proceedings, including all kinds of pleadings and motions belong to the class of

communication that are absolutely privileged.

On the other hand, respondents maintain that an order denying a motion to quash cannot be the subject of certiorari which is a remedy to keep an inferior court within the limits of its jurisdiction; that the delimitation of the correctness, if at all, should be brought on appeal, after the trial of the case and not in certiorari; that petitioner's contention that the act complained of does not constitute an offense because it is protected by the mantle of privilege is strictly a matter of defense.

Petitioner's contention should be sustained. Well settled is the rule that parties, counsel and witnesses are exempted from liability in libel or slander cases for words otherwise defamatory, uttered or published in the course of judicial proceedings, provided the statements are pertinent or relevant to the case.

"Where the libelous or slanderous words published in the course of judicial proceedings are connected with, or relevant, pertinent or material to, the cause in hand or subject of inquiry, the same may be considered privileged communication and the counsel, parties, or witnesses therein are exempt from liability. (See 53 C.J.S. 170-171; *Tupas vs. Parreño*, et al. G.R. No. L--12545, April 30, 1959, and authorities cited therein). (*Tolentino vs. Baylosis*, 110 Phil. 1010)"

And, as to the degree of relevancy or pertinency necessary to make alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevance and impropriety. (*People vs. Andres*, 107 Phil. 1046).

In the case at bar, petitioner was prompted to say: "I doubt how did you become a doctor" when Dr. Macaspac would not answer the question as to who prepared the document presented to her, and when the witness repeatedly evaded the question by saying that she did not understand the word "made."

Newel, in his work on *The Law of Slander and Libel*, 4th ed., uses the following language:

"Absolute Privilege. - In this class of cases it is considered in the interest of public welfare that all persons should be allowed to express their sentiments and speak their minds fully and fearlessly upon all questions and subjects; and all actions for words so spoken are absolutely forbidden, even if it be alleged and proved that the words were spoken falsely, knowingly and with express malice." (Section 350, pp. 387-388).

It is, thus, clear that utterances made in the course of judicial or administrative proceedings belong to the class of communications that are absolutely privileged. Stated otherwise, the privilege is granted in aid and for the advantage of the administration of justice. As this Court observed in *Sison vs. David* (*Supra*):

"x x x The privilege is not intended so much for the protection of those engaged in the public service and in the enactment and administration of law, as for the promotion of the public welfare, the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for the recovery of damages. (33 Am. Jur. 123-124)"

Generally, certiorari does not lie to question the propriety of an interlocutory order of the trial court. Interlocutory orders ordinarily should be reviewed when an appeal is taken from the trial court's judgment. Not every procedural error or erroneous legal or factual conclusion amounts to grave abuse of discretion. However, as this Court ruled in *Sanchez, et al vs. Hon. Mariano A. Zosa, et al.*, (L-27043, November 28, 1975), "when a grave abuse of discretion was patently committed, or the lower court acted capriciously and whimsically, then it devolves upon this Court in a certiorari proceeding to exercise its supervisory authority and to correct the error committed which, in such a case, is equivalent to lack of jurisdiction."

WHEREFORE, the trial court's orders of February 20, 1981 and May 5, 1981 are reversed and set aside. Respondent is hereby ordered to desist and refrain from proceeding with the trial of Criminal Case No. 126521.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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