

JOSE CRUZ, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND CESAR SANTIAGO, RESPONDENTS.

G.R. No. 66327. May 28, 1984

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

A petition for review on certiorari of the decision of respondent appellate court affirming in toto the decision of the former Court of First Instance of Bulacan sentencing petitioner as defendant below to pay respondent-plaintiff Cesar Santiago the sums of P5,000 as moral damages, P2,000 as exemplary damages, P2,000 as attorney's fees and the cost of suit.

The above-said damages were awarded to respondent for alleged malicious prosecution by petitioner against him arising from three separate complaints that petitioner (executive vice president and general manager of the Baliuag Electric Light and Power Co., Inc.) had filed in 1972-74 for alleged estafa against said respondent based on a personal check that said respondent had issued in the amount of P2,000 in favor of the said electric company as partial payment of the ice plant's electric bill in the total sum of P14,733.60, which check, however, when presented to the bank was dishonored. (Said respondent is said to be the manager of the ice plant's office owned by his father.) The said criminal complaint was filed by petitioner with the office of the Provincial Fiscal of Bulacan which dismissed it on January 3, 1973 "for being civil in nature." In May and June, 1974, respondent was advised to report to the Philippine Constabulary Headquarters at San Rafael, Bulacan and to the Civil Relations Office headed by Col. Noel Andaya with regards to the same complaint for alleged estafa which said agencies, however, dismissed upon being advised of the Provincial Fiscal's resolution. Thereafter, on August 29, 1974, respondent instituted this civil action for damages against petitioner based on alleged malicious prosecution and alleging that "in bringing said actions, the defendant [petitioner] acted without probable cause and was actuated or impelled by legal malice." Respondent appellate court affirmed the trial court's judgment for damages stating that from the filing of the various complaints "it can be concluded with certitude that appellant's actuation was primarily intended to harass or vex the appellee."

The Court finds no factual nor legal basis for the conclusion that petitioner's filing of his complaints was "primarily intended to harass or vex the appellee." Prescinding from the certification issued by the Commanding Officer of the Philippine Constabulary Headquarters at San Rafael, Bulacan that petitioner had not filed nor signed any complaint against respondent, the acts of petitioner as an official of the electric company in filing the criminal complaint with the Provincial Fiscal's office for alleged estafa because of the rubber check issued by respondent cannot be said to be malicious nor an act of harassment. Petitioner was merely pursuing his company's lawful cause of action against respondent for what he believed to be a criminal act of issuing checks without funds. The same can be said of the complaints that were apparently filed by petitioner with the Philippine Constabulary and the Civil Relations Office for assistance in connection with the matter. Noteworthy also is part of the answer made by petitioner in his answer in the trial court "that the subject matter of this complaint in the amount of P2,000 [covered by the rubber check of respondent] has not yet been paid up to the present time," as

reproduced in the appellate court's decision (Rec., p. 28).

In fine, no valid conclusion of malice in petitioner's pursuit on behalf of the electric company of the various actions taken by him with the various agencies to compel respondent to answer for his issuance of the rubber check (in supposed payment of the electric bill due and owing from respondent's ice plant to petitioner's company) can be drawn from the admitted evidence of record. Malice and bad faith cannot be presumed. It may be noted furthermore that the legal question of whether the issuance of such bouncing check constitutes estafa under the Padilla amendment of Art. 315, sec. 2(d) of the Revised Penal Code (Republic Act No. 4885 approved on June 17, 1967), which according to its author, former Senator Ambrosio Padilla, was intended to penalize the issuance of checks without funds (bouncing or rubber checks) [Book II, Vol. 3, pp. 366-367], even though the check is issued in payment of a pre-existing obligation, was not resolved until this Court's negative decision on November 20, 1978 in the cases of *People vs. Sabio, Sr.*, *Liap vs. Court of Appeals* and *Lagus vs. Hon. Cusi, Jr.* (86 SCRA 568). Many criminal cases were filed in court under the said Act on the premise that the issuance of bouncing checks was thereby made a criminal act of swindling. The Court's decision was by a bare majority of eight members with four members led by the now Chief Justice dissenting. Under such circumstances, petitioner's act of pursuing his criminal complaint could not be said to be tainted with malice. It is a matter of common knowledge that thereafter, B.P. Blg. 22 was enacted on April 3, 1979 making the act of issuance of a check without sufficient funds a special criminal offense.

ACCORDINGLY, the Court Resolved, dispens-ing with further proceedings and the filing of briefs or memoranda, to GRANT the petition and to SET ASIDE the decision of respondent appellate court. With costs against private respondent in all instances.

Melencio-Herrera, Plana, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

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