

MAGTANGGOL QUE, PETITIONER, VS. THE HON. INTERMEDIATE APPELLATE COURT AND ANTONIO NICOLAS, RESPONDENTS.

G.R. No. 66865. January 13, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

Both procedural and substantive issues are involved in this petition for review by certiorari of a decision of the respondent court reinstating the original decision of the trial court in favor of the appellant, the private respondent herein.

The petitioner claims that the respondent court committed reversible error in holding that his second motion for reconsideration was pro forma and therefore null and void. It is also his contention that the revived original decision of the trial court, which had been reversed on his motion for reconsideration, was not in accordance with law and jurisprudence and should itself be annulled.

The case arose when Magtanggol Que, the herein petitioner, filed a complaint for estafa against private respondent Antonio Nicolas in the office of the city fiscal of Caloocan City for issuance of several checks which were subsequently dishonored when presented for encashment.[1] The charge was dismissed for lack of merit, the investigating fiscal holding that the controversy was an accounting matter that did not necessarily involve deceit on the part of Nicolas.[2] Subsequently, Nicolas filed his own complaint for damages against Que, this time in the Court of First Instance of Bulacan, for what he claimed was his malicious prosecution by the latter.[3] It was now Que's turn to claim harassment. In his counterclaim, he averred that Nicolas had maliciously filed the complaint in Bulacan although he was a resident of Caloocan City; that the private respondent was really indebted to him in any case; and that it was he who had suffered damages as a result of the unwarranted suit.[4]

The dispute goes back to several previous business transactions between the protagonists when they were still on amiable terms. In July and August of 1975, the private respondent ordered from the petitioner certain amounts of canvass strollers which were delivered to and accepted by Nicolas, who issued five checks therefor to Que. The total face value of the checks was P7,600.00. Payment thereof was subsequently stopped by Nicolas and Que was unable to encash them. Nicolas explained later that he had ordered the "stop payment" because of defects in the articles sold which despite his requests Que had not corrected. Que for his part argued that the allegedly defective articles were never returned to him until after he had filed the charge for estafa and that Nicolas had earlier merely ignored his complaints about the dishonored checks.

The original decision written by the late Judge Benigno M. Puno held in favor of the plaintiff and awarded him the total amount of P80,500.00 in moral, exemplary, and nominal damages plus a P4,000.00 attorney's fee and the costs of the suit.[5] The finding was that the defendant had acted maliciously in filing the estafa charge and in alleging that the plaintiff had issued the dishonored checks with deceit aforethought.

The decision was served on the petitioner on November 8, 1977.[6] He filed a motion for reconsideration, which was denied on November 3, 1978, by Judge Oscar C. Fernandez, who had succeeded Judge Puno.[7] On

November 15, 1978, the petitioner filed his notice of appeal and appeal bond, followed two days later by his record on appeal, which was opposed by the private respondent.[8] On November 29, 1978, Nicolas filed a motion for execution pending appeal.[9] On December 29, 1978, Que filed a motion to stay the running of the period for appeal and leave to file a second motion for reconsideration within a period of thirty days. The trial court granted an extension up to January 29, 1978.[10] The second motion for reconsideration was filed on that date and on the basis thereof the trial court rendered its amended decision dated February 21, 1978,[11] which reversed the original decision penned by Judge Puno. It also awarded P10,000.00 moral damages to Que on his counterclaim. Thus it was that Nicolas, the would-be-appellee, became himself the appellant in the respondent court.

In his appeal, the private respondent contended that the amended decision rendered by Judge Fernandez was null and void because the trial court lost jurisdiction over the case when the petitioner filed his notice of appeal, appeal bond and record on appeal. Assuming the appeal had not yet been perfected, the trial judge nevertheless could not have acted on the second motion for reconsideration because it did not contain any notice of hearing and was also filed beyond the thirty-day extension prayed for by the petitioner himself. There was the further contention that the second motion for reconsideration was pro forma and as "a mere scrap of paper" did not suspend the running of the reglementary period for appeal.[12]

The first objection is clearly without merit as it is not disputed that the record on appeal had not yet been approved by the trial court and in fact had been opposed by the private respondent himself. The trial court had not yet lost jurisdiction over the case because Rule 41, Section 9, of the Rules of Court provides:

"Sec. 9. When appeal deemed perfected, effect thereof. – If the notice of appeal, the appeal bond and the record on appeal have been filed in due time, the appeal is deemed perfected upon the approval of the record on appeal and of the appeal bond other than a cash bond, and thereafter the trial court loses its jurisdiction over the case x x x."

While it is conceded that the motion for reconsideration did not contain any notice of hearing, it is also true that the private respondent was notified of such hearing by the trial court and that his counsel appeared thereat, to reiterate his position that the second motion was null and void. It seems to us that in opting not to oppose the same on the merits,[13] the private respondent was relying too much on a technicality. As for the claimed tardiness, the respondent court correctly ruled that although the petitioner had asked for an extension of thirty days, which would have ended on January 28, 1979, the recorded fact was that the extension granted was up to January 29, 1979. The motion was filed on this date and so could not be faulted for tardiness.

On the last ground, however, the respondent court[14] sustained the private respondent. It held that the second motion for reconsideration should have been denied for being pro forma as it was a mere reiteration of the issues previously raised and already decided by the trial court. Accordingly, it annulled the amended decision based on the second motion for reconsideration and reinstated the original decision of Judge Puno.

The Court has carefully gone over the first and the second motions for reconsideration and cannot agree with the respondent court that the latter simply reproduces the issues already raised and resolved in the first motion. We find that the second motion not only restates and reargues the first motion but also amplifies the same; and more than that, it also invokes and supports other substantial grounds not earlier raised in the first motion.

In the first motion,[15] the petitioner argued that there was probable cause to justify his filing of the complaint for estafa and that he had not been motivated by malice; that the filing of the complaint for malicious prosecution in Bulacan was intended to harass him because the plaintiff was a resident of Caloocan City; and that there was no basis for the award of damages. In the second motion,[16] the petitioner augmented his claim that he had not filed

the estafa charge with malice; that he had probable cause because the defendant had not gone beyond his own self-serving statements to prove that he had stopped payment of the checks because the goods delivered to him were defective; that the mere dismissal of the charge in the fiscal's office was not a ground for damages nor did it constitute an actionable wrong; and that the award of damages was not justified.

While some of the grounds raised in the first motion were admittedly also invoked in the second motion, the purpose was evidently to reinforce the arguments thereon; and, no less significantly, the additional issues raised were seriously argued and supported with authorities. It is therefore incorrect to say that the second motion for reconsideration was a mere repetition of the first motion and so should not have been accepted by the trial court.

Coming now to the substantive issues, we observe that the declared nullity of the second motion for reconsideration was the sole basis of the respondent court in setting aside the amended decision of Judge Fernandez and reinstating the original decision of Judge Puno. The more important question of whether or not the petitioner had instituted a malicious prosecution of the private respondent was not resolved as it was felt no longer necessary to do so. But as we have here ruled that the second motion for reconsideration was not merely pro forma, it should follow that that important substantive question raised by the appellant must still be addressed and decided.

Normally, the resolution of this question should be undertaken by the respondent court, to which this case ought to be remanded for further proceedings on the matter. However, considering the time this case has been pending since it was commenced in 1976 with the filing of the complaint for damages, and the pertinent records being available for direct examination and study by the Court, we deem it necessary and expedient to resolve the question ourselves, that this case may be decided once and for all without further delay.

In the amended decision that reversed the original decision awarding damages to the private respondent, Judge Fernandez declared:

"In awarding plaintiff damages and attorney's fees in the total amount of P80,900.00, by way of moral, nominal and exemplary damages and attorney's fees, the Court overlooked the ruling that failure in a suit is not per se an actionable wrong; that adverse result of an action does not per se make the act wrongful and subject the actor to payment of moral damages, for the law could not have meant to impose a penalty of a right to litigate, the right so precious that moral damages may be charged to those who exercise it erroneously; that reliance in good faith to counsel's advice given after a full and fair statement of all the facts to the attorney, does not render the party liable for damages and that it is immaterial that the attorney's advice is unsound or erroneous; and that where there is no clear showing of malice on the part of petitioner in filing the action, the worries and anxiety suffered by respondent are usually caused to the party haled into a court as a defendant, and there is no sufficient justification for awarding of damages.

"The resolution of dismissal by the Fiscal's Office of Caloocan City is not tantamount to a decision in the sense that the proceedings had therein were merely summary in nature as the title of the proceeding 'preliminary investigation' so connotes. As a preliminary proceeding, it lacks the thoroughness and rigidity of an ordinary trial. The investigating fiscal was merely called upon to determine at first instance whether or not there exists a prima facie case to justify the filing of an information in court.

"Viewed in the light of the foregoing, the Court so believes that the lone self-serving testimony of plaintiff is insufficient to justify the award of the fabulous sum of P80,900.00 by way of moral, nominal and exemplary damages and attorney's fees.

On the other hand, the Court is convinced that defendant had proven that of the sum of P7,600.00 covered by the five bouncing checks issued to him by plaintiff, at least P4,600.00 remains unpaid up to now.

"The defense of plaintiff that 198 pieces of canvass strollers which he received from defendant were defective, is in reality a lame and shallow excuse for plaintiff's non payment of his truly, just, valid, legal and moral obligation to defendant."[*]

We take note at this point of the jurisprudence cited by the private respondent regarding the inhibitions that ought to be observed by a judge in reviewing the decision of his predecessor who conducted the trial and had the opportunity to observe the demeanor of the witnesses and to test their credibility first-hand. We affirm the rule announced in *Miranda v. Court of Appeals*[17] that the original decision should not be lightly revised. Nevertheless, the rule is not inflexible and ought not to be applied where an objective re-examination of the facts and the applicable laws dictates a reversal of the former judgment in the interest of justice. Decisions are after all not infallible, and much less are they immutable, more so if, as in the present case, they have not yet become final and executory.

The question is not really whether or not Judge Fernandez had the authority to reverse the decision of Judge Puno but whether or not the reversal was correct.

A study of the appealed amended decision shows that it was not arbitrarily reached by Judge Fernandez. On the contrary, the detailed assessment of the facts in light of the pertinent laws shows that the conclusions of the trial court were the result of a careful study of the record, as befitted a judge who was in effect reviewing the verdict of a colleague. In our view, the private respondent has not shown that Judge Fernandez committed any reversible error when on the basis of his own appraisal of the case he found for the petitioner and reversed the original decision of Judge Puno.

As early as in 1932, in *Buchanan v. Esteban*, [18] this Court had already stressed that "one cannot be held liable in damages for maliciously instituting a prosecution where he acted with probable cause." As Justice Moreland explained in that case:

"Probable cause is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. The general rule is well settled that one cannot be held liable in damages for maliciously instituting a prosecution where he acted with probable cause. In other words, a suit will lie only in cases where a legal prosecution has been carried on without probable cause. And the reason for the rule as stated by Blackstone, is 'that it would be a very great discouragement to public justice if prosecutors, who had a tolerable ground of suspicion, were liable to be sued at law when their indictments miscarried.'

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"Under the Spanish Law, the element of probable cause was not treated separately from that of malice, as under the American Law. When a complaint was laid and there was probable cause to believe that the person charged had committed the acts complained of, although, as a matter of fact, he had not, the complainant was fully protected, but not so much on the theory of probable cause as on the ground that, under such circumstances, there was no intent to accuse falsely. If the charge, although false, was made with an honest belief in its truth and justice, and there were reasonable grounds on which such a belief could be founded, the accusation could not be held to have been false in the legal sense." (Underscoring supplied.)

In the case at bar, it is indisputable that the five checks issued by the private respondent had been dishonored and that the drawer had failed to make them good despite the protests of the petitioner. Nicolas had merely ignored him. It is also a matter of record that the checks were post-dated, which made the petitioner assume that at the time they were issued the private respondent did not really have sufficient funds for their encashment. It could be, as the original decision assumed, that the checks were in the nature of promissory notes, to be made good when the articles delivered met with the drawer's approval. However, considering that the checks could not be encashed

and the supposedly defective goods had not been returned by the drawer, the petitioner had reason to believe when he filed his complaint that the buyer had at the outset intended to deceive him.

The record shows that the criminal charge for estafa was filed by the petitioner with the fiscal's office on October 8, 1975,[19] and that the supposedly defective articles were returned by the private respondent to the former's driver only on October 13, 1975.[20] The only evidence that the articles were defective was the testimony of the private respondent himself, who claimed that the buttons on the canvass strollers were misplaced. Considering that Nicolas and Que had apparently been cordial until then and that they were businessmen involved in a symbiotic relationship, the Court feels that what Nicolas would or should have done was request the petitioner to correct the claimed defects instead of arbitrarily stopping payment on the checks in question. Strangely, what the private respondent did instead was simply cut short a mutually profitable association with this hostile act. The petitioner had to find out for himself that the checks had been dishonored on orders of the drawer.

Except for his own allegations, there is no evidence that Nicolas asked or, if necessary, demanded the repair of the strollers. Neither is there any evidence that he had warned Que that payment on the checks would be stopped unless the repairs were undertaken. The private respondent says that he did all this by telephone,[21] but this self-serving statement is denied by the petitioner.[22] As the Court itself sees it, Nicolas, while retaining the strollers which had been delivered to him on the strength of his post-dated checks, simply issued the stop payment order without even previous notice to the petitioner. The petitioner alleged that he complained about the dishonored checks - also verbally, over the telephone - but the private respondent simply ignored him.[23] It is noteworthy that, by contrast, this averment of the petitioner was not denied by the private respondent.

The presence of probable cause signifies as a legal consequence the absence of malice. It is evident that the petitioner was not motivated by ill feeling but only by an anxiety to protect his rights when he filed the criminal complaint for estafa with the fiscal's office. If he averred that the private respondent had no funds in the bank when he issued the post-dated checks and intended to cheat the payee, it was because the circumstances of the case as Que saw them led him to this conclusion. Even if the fiscal found that no deceit was involved and that the petitioner's claim was unfounded, the mistaken charge was nonetheless, in the legal sense, not malicious.

As the Court has held:

"To constitute malicious prosecution, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person that it was initiated deliberately by the defendant knowing that his charges were false and groundless. Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution." [24] (Underscoring supplied.)

We agree with the petitioner that the mere dismissal of the criminal complaint by the fiscal's office did not create a cause of action because the proceedings therein did not involve an exhaustive examination of the elements of malicious prosecution. What was inquired into in that preliminary investigation was whether or not there was a prima facie showing of estafa that would justify the filing of the corresponding information. Nowhere in the fiscal's investigation report is there any statement imputing malice to the complainant nor could it have as this was not the matter in issue.

The Court is not unaware of the common tactic of filing complaints for estafa in the fiscal's office in hopes that fear of criminal prosecution will compel the debtor to settle his civil obligation. Fortunately, the fiscal has often seen through this maneuver and resisted this none-too-clever effort to make his office a collection agency for the complainant. In view of the antecedents of the case at bar, however, we are satisfied that the criminal complaint filed by the petitioner was not a mere ploy to enforce the payment of his account by Nicolas. There was here a genuine protest over the abrupt and suspicious order to stop the encashment of the checks issued to him by the

private respondent.

In a free society, controversies are heard and settled under the rule of law in the forum of the courts of justice. It is one of the virtues of our system of government that if a person feels he has been aggrieved, he does not have to take the law into his hands or resort to the use of force for the vindication of his injury. The courts are there to hear and act on his complaint. The right to litigate is an escape valve to relieve the pressures of personal disagreements that might otherwise explode in physical confrontation. It is necessary not only for upholding one's claims when they are unjustly denied but also for the maintenance of peace if not goodwill among incipient antagonists. Without the right to litigate, conflicting claims cannot be examined and resolved in accordance with one of the primary purposes of government, which is to provide for a just and orderly society.

As the Court has held:

"While we must look upon the plight of hapless victims of unfounded and malicious prosecutions with tolerance and sympathy, sound principles of justice and public policy dictate that persons shall have free resort to the courts for redress of wrongs and vindications of their rights without fear of later on standing trial for damages whereby lack of sufficient evidence, legal technicalities or a different interpretation of the laws on the matter the case would lose ground and therein defendants acquitted. Proof and motive that the prosecution or institution of the action was prompted by a sinister design to vex and humiliate a person and to cast dishonor and disgrace must be clearly and preponderantly established to entitle the victims to damages and other rights granted by law; otherwise, there would always be a civil action for damages after every prosecution's failure to prove its cause resulting in the consequent acquittal of the accused therein." [25]

Furthermore:

"The adverse result of an action does not per se make the act wrongful and subject the actor to the payment of moral damages. The law could not have meant to impose a penalty on the right to litigate, such right is so precious that moral damages may not be charged on those who may exercise it erroneously." [26]

There is in fact a stronger suggestion of malice in the circumstance that the private respondent filed his complaint for damages in Valenzuela, Bulacan, as his alleged residence, notwithstanding that his place of business, in which he had dealings with the petitioner, was Caloocan City. The Court finds the petitioner's claim of harassment more plausible. However, inasmuch as good faith is presumed, and applying this presumption both to the petitioner and the private respondent, we hereby rule that, absent sufficient rebuttable evidence, neither of them is guilty of malice in their mutual relations.

There remains the issue of the actual damages, which the amended decision awarded in the sum of P4,600.00, representing the cost of the strollers not yet paid for by the private respondent. The evidence shows that these items were returned, albeit belatedly, for which the petitioner's driver had issued a receipt to Nicolas. The private respondent questioned this award in his appeal and argued his challenge in his appellant's brief, but the petitioner for his part offered no rebuttal and did not even file the appellee's brief. [27] In view of this, we hold that the said award should for lack of basis be, as it is hereby, disallowed.

The acts of the petitioner and the private respondent have in the view of the Court been far from exemplary. The petitioner could have exercised a little more diligence in ascertaining the facts before filing the criminal complaint in the fiscal's office and provoking all this legal conflict. The private respondent, on the other hand, exhibited an undue belligerence that naturally excited the suspicions of the petitioner and later exacerbated their relations when he filed his own complaint in Bulacan instead of Caloocan City.

In the exercise of its discretion, the Court denies both parties their respective claims for damages and holds that each of them must bear the financial consequences of his own acts, including the litigation expenses. The

damages awarded in the original and amended decisions are all disallowed.

WHEREFORE, the decision of the respondent court dated March 12, 1984, is SET ASIDE and the amended decision of the trial court dated February 21, 1979, is REINSTATED as above modified. This decision is immediately executory. SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exh. "A."

[2] Exh. "B."

[3] Record on Appeal, pp. 1-5 (Rollo, p. 151).

[4] Ibid., pp. 6-14.

[5] Rollo, pp. 50-61.

[6] Record on Appeal, p. 35 (Rollo, p. 151).

[7] Rollo, p. 162.

[8] Record on Appeal, pp. 61-63 (Rollo, pp. 151, 103).

[9] Ibid., pp. 63-64.

[10] Id., pp. 69, 86-87.

[11] Rollo, pp. 144-149.

[12] Appellant's Brief, pp. 32-34 (Rollo, p. 150).

[13] Rollo, p. 148.

[14] Zosa, J., ponente, with Coquia and Castro-Bartolome, JJ., concurring.

[15] Ibid., pp. 62-78.

[16] Id., pp. 79-88.

* Rollo, pp. 89-94.

[17] 71 SCRA 295.

[18] 32 Phil. 363.

[19] Exh. "A."

[20] Exh. "D."

[21] TSN, August 31, 1976, p. 4.

[22] Rollo, pp. 81-82.

[23] TSN, November 12, 1976, p. 21; Rollo, p. 16.

[24] Manila Gas Corporation v. Court of Appeals, 100 SCRA 602.

[25] Buenaventura v. Sto. Domingo, 103 Phil. 239.

[26] Barretto v. Arevalo, 99 Phil. 771, cited in Ramos v. Ramos, 61 SCRA 284.

[27] Rollo, p. 186.

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