

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ROSIE CUARESMA, AND HON. JUDGE VICTORIANO B. DE LA CRUZ, RESPONDENTS.

G.R. No. 67787. April 18, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

The annulment of the Order of respondent City Court Judge of Dumaguete City in Criminal Case No. 7238[1] -- dismissing the information for oral defamation on the ground of prescription of the offense -- is what is principally sought in the instant special civil action of certiorari instituted by the Second Assistant City Fiscal of Dumaguete in this Court.

Criminal Case No. 7238 above mentioned was commenced in respondent Judge's Court by an information filed on August 21, 1978 by an Assistant Fiscal of Dumaguete City. It charged Rosie Cuaresma with oral defamation consisting in the imputation of a crime which cannot be prosecuted de officio.[2] The information was filed after a preliminary investigation had been conducted on the basis of the affidavit of the complainant and that of her witness,[3] and alleged that -

"* * with deliberate intent to cast discredit, disrepute and contempt upon the person of one LUZ LUMACAO," Rosie Cuaresma, on or about the 6th day of August, 1978, "did * * publicly speak and utter against the said LUZ LUMACAO the following insulting and defamatory words and expressions, to wit: "Ah, paisog-isog ka kaybaye diay ka sa akong bana," which means, "Ah, you are trying to be tough because you are the paramour of my husband."

To the information were annexed said affidavits of Luz Lumacao and her witness, Soledad TaniIOn, both dated August 21, 1978 and both sworn to before the First Assistant City Fiscal of Dumaguete City.¹ Lumacao's affidavit inter aila stated that on one occasion "this Rosie Cuaresma dishonor(ed) me by accusing me (in her son's presence) as a paramour of her husband Victor Cuaresma," and on another occasion she had been told by Flor Samonte that "Rosie (Cuaresma) told me that you are Victor's paramour."

Rosie Cuaresma moved to quash the case. She contended that the case had been commenced by an information filed by the fiscal, instead of by complaint of the offended party, in violation of Article 360 of the Revised Penal Code² providing in part that -

No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de officio shall be brought except at the instance of and upon complaint expressly filed by the offended party.

Respondent Judge denied the motion to quash on the strength of this Court's ruling in *Fernandez v. Lantin*, 74 SCRA 338 (1976),³ viz:

It must be noted that this error (initiation of prosecution by information instead of the offended party's complaint) could be corrected without sustaining the motion to quash and dismissing the case. Pursuant to Sec. 1, paragraph (a) of P.D. No. 77, under which the Assistant City Fiscal conducted the preliminary investigation, the statement of the complainant was sworn to before the aforesaid investigating Fiscal. Assuming that the

recitals in said sworn statement contain all those required of a complaint under the Rules, a copy of said verified statement of the complainant should be filed with the respondent court in order to comply with the requirements of Article 360 of the Revised Penal Code, otherwise, the respondent fiscal should file with said court a verified complaint of the offended party.

In his Order denying quashal, dated August 4, 1980.⁴ His Honor required the fiscal "to file with the Court the verified complaint of the offended party within ten (10) days," this being necessary because the latter's affidavit had not been "sworn to before and verified by (the) investigating fiscal," and the affidavit did not contain all the "recitals ** required by the Rules for a valid complaint ** the quoted defamatory words alleged in the information ** (not being) found in said affidavit." A new complaint (but entitled 'information') of Luz Lumacao, subscribed and sworn to by her (instead of the fiscal), and reproducing the averments of the original information, was filed by the Fiscal on the same day, August 4, 1980.⁵

Three (3) months later, and prior to her arraignment on the verified complaint,⁶ Rosie Cuaresma filed another motion to quash,⁷ this time alleging that the offense had prescribed. She claimed that the filing on August 21, 1978 of the original information had not interrupted the running of the period of prescription of the crime -- two (2) months from discovery¹ -- and the prescriptive period had lapsed long prior to the submission of the corrective complaint signed by the offended party on August 4, 1980. Respondent Judge agreed and ordered dismissal of the case, by Order dated April 15, 1981. He said:²

We find merit in the claim ** that the filing of the original information without the verified complaint of the offended (party) did not interrupt the running of the period of prescription as the court did not acquire jurisdiction over the case from the very beginning. It was the filing of the verified complaint that conferred jurisdiction upon the Court and this was on August 4, 1980. Regretfully, however; the crime had already prescribed when the same was filed. In the case of *Fernandez vs. Lantin*, the Supreme Court held that the error can be corrected without sustaining the Motion to Quash and dismissing the case but instead the court shall require the fiscal to file the verified complaint of the offended party. However, it is the considered opinion of this Court that the doctrine laid down by the Supreme Court in said case shall be subject to the condition that prescription had not yet set in otherwise the same maybe quashed on the latter ground.

The fiscal's motion for reconsideration dated June 26, 1981, belatedly filed,³ was denied by Order rendered on August 19, 1981, "for lack of sufficient merit and for having been filed out of time."⁴

No steps were thereafter taken by the Office of the City Fiscal to obtain relief from these adverse orders of respondent Judge until almost three (3) years later, or on May 31, 1984, when the Second Assistant City Fiscal commenced the special civil action of certiorari at bar.⁵

The Order of dismissal dated April 4, 1980 was without doubt a final order. It finally disposed of the case and left nothing more to be done by the Court, on its merits.⁶ It was appealable at the instance of the People, since the defendant would not thereby be placed in double jeopardy, no plea having as yet been entered by or for her.⁷ The appeal could have been taken by filing with the inferior court a notice of appeal "to the Court of First Instance within fifteen (15) days from the promulgation of the judgment (or order)."⁸

The appeal, had it been timely taken, should have been successful. The Order was in truth tainted by an error of law. Contrary to its holding, the filing by the complainant with the Office of the City Fiscal of her complaint in the form of an affidavit, on the basis of which a preliminary investigation had been conducted and the information subsequently filed,¹ had indeed tolled the period of prescription.² And the subsequent filing of an information based on the complaint sworn to before the fiscal -- which complaint contains all the elements of a valid complaint³ -- is "sufficient compliance with Article 344 of the Revised Penal Code and Section 4, Rule 110 of the Rules of Court, ** (said complaint [affidavit] being) a part of the record which was elevated to the Court of First

Instance ** (and) should have been presented in evidence but even if not (so) offered ** is a matter of judicial notice."⁴ No such appeal was ever taken, however. The order thus became final and executory.⁵

The institution of the special action of certiorari at bar does not save the day for the People. The action suffers from serious defects. In the first place, the action was filed by a Second Assistant City Fiscal and not by the Solicitor General, and was hence dismissible on this account.⁶ In the second place, the certiorari suit is being made to substitute for, and perform the function of, an appeal, which is not permissible.⁷ Again, the action was filed much too late; it was commenced only after about three (3) years had elapsed from the promulgation of the order sought to be annulled, no explanation for the delay being at all essayed: it was therefore barred by laches.⁸

Furthermore, the remedy of certiorari is limited to acts of any agency or officer exercising judicial functions or of any judge which are claimed to be "without or in excess of its or his jurisdiction, or with grave abuse of discretion."⁹ It does not lie for the correction of errors of judgment which may be brought about only by appeal.¹⁰ Not every error in procedure, or every erroneous conclusion of law or of fact of serious nature, is correctible by certiorari, appeal being the appropriate remedy, except where the error constitutes grave abuse of discretion, i.e., "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."¹ The error here committed by His Honor obviously does not constitute grave abuse of discretion. It was an error of law, involving what was then deemed unsettled principle: whether or not the filing of a complaint in the office of the fiscal interrupted the period of prescription of the offense charged. It is not correctible by certiorari.

A last word. This Court's original jurisdiction to issue writs of certiorari (as well as prohibition, mandamus, quo warranto, habeas corpus and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions.² It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court),³ although prior to the effectivity of Batas Pambansa Bilang 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction."⁴ This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard, *supra* -- resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" -- was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court's corresponding jurisdiction would have had to be filed with it.

The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land. The proceeding at bar is a case in point. The application for the writ of certiorari sought against a City Court was brought directly to this Court although there is no discernible

special and important reason for not presenting it to the Regional Trial Court.

The Court therefore closes this decision with the declaration, for the information and guidance of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof.

WHEREFORE, the petition is DISMISSED, without pronouncement as to costs.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rendered on April 15, 1981 [Rollo, pp. 25-26]; (challenged, as well, is the Order of August 19, 1981, denying reconsideration [Rollo, p. 30])

[2] Rollo, p. 11

[3] Id., p.3

1 Rollo, pp. 12, 18

2 Reproduced in Sec. 4 (5) Rule 110 of the Rules of 1964

3 SEE also Peo. v. Quizada, GR. Nos. 61079-81, April 15, 1988, citing Peo. v. Rondina, 149 SCRA 128, 132-133

4 Rollo, p. 18

5 Id., p. 19

6 Private respondent's averments to this effect (Rollo, pp. 47, 108-109) have not been traversed by either the Solicitor General or the Fiscal.

7 Id., p. 20

1 ART. 90, RPC

2 Rollo, p. 26

3 Id., p. 27. N.B. The Fiscal impliedly acknowledged the tardiness in the filing of his motion for reconsideration attributing it, however, to the misplacement by the receiving clerk of copy of the Order of dismissal of April 15, 1981, with the result that he learned of it only when another copy of the order was given to him by the husband of the offended party on June 14, 1981 (Rollo, p. 27).

4 Id., p. 30

5 Id., pp. 2, 31

6 SEE Moran, Comments on the Rules, 1980 ed., Vol. 4, p. 348; Investments, Inc. v. C.A., 147 SCRA 334 and cases collated therein

7 Sec. 2, Rule 122 of the Rules of 1964, in relation to Sec. 5, Rule 123 and Peo. v. Quimsing, 12 SCRA 556, 560, Peo. v. Balicasan, 17 SCRA 1119 (1966), Peo. v. Ayoso, 19 SCRA 820-- 822-823; Moran, op. cit., pp. 367-368

8 Sec. 5, Rule 123, Rules of Court of 1964 (now Secs. 3 and 6, Rule 122 of the 1985 Rules on Criminal Procedure, as amended)

1 SEE footnote 3, p. 1, supra

2 Francisco v. C.A., 122 SCRA 548 (1988); of Peo. v. Olarte, 19 SCRA 494. N.B. The 1988 Amendments to the

1985 Rules on Criminal Procedure have incorporated the ruling in *Francisco*, abandoning that in *Olarte*, the rule now being that the filing of a complaint with the fiscal's office interrupts the period of prescription of the offense charged (Sec. 1, Rule 110, as amended). For this reason, Section 6 (b), Rule 111 of the Rules of 1985 -- providing for interruption of the prescriptive period by the filing of a petition for suspension [based upon a prejudicial question] of a criminal action undergoing preliminary investigation in the fiscal's office -- was eliminated.

3 *Peo. v. Ilarde*, 125 SCRA 11, 19

4 *Peo. v. Tampus*, 88 SCRA 217, 221; SEE also *Peo. v. Bulaong*, 106 SCRA 344, 349, reaffirming the principle that the prosecution of a crime against chastity may be conducted by the fiscal on the basis of the complaint filed in the inferior court and there is no need to file an information, citing *Peo. v. Imas*, 64 Phil. 419; *Peo. v. Varela*, 64 Phil. 1066; *Peo. v. Roa*, 60 Phil. 1018; *U.S. v. Garcia*, 27 Phil. 254; *Peo. v. Zurbano*, 37 SCRA 565; SEE, finally, *Peo. v. Co Hiok*, 62 Phil. 501; *Peo. v. Gebune*, 87 Phil. 727

5 SEE *Ramos v. Gonong*, L-42012, Aug. 31, 1976

6 *Republic v. Partisala*, 118 SCRA 870 (1982), N.B. Subsequently, however, the Office of the Solicitor General intervened in the action and represented the People.

7 Sec. 1, Rule 65; SEE cases collated in *Moran*, op. cit., Vol. 3, pp. 170-171, 178; *Mabuhay Ins. Co. v. C.A.*, 32 SCRA 245; *Peo. v. Villanueva*; 110 SCRA 465

8 *Melocotones v. CFI*, 57 Phil. 144; *Coronel v. IAC*, 155 SCRA 270; *Corro v. Zamacoma*, 138 SCRA 78; *Seno v. Manguba*, 156 SCRA 118

9 Sec. 1, Rule 65, Rules of Court

10 *Cochingyan v. Cloribel*, L-27070, May 6, 1977; *Heirs of Juliana Clavano v. Geneto*, L-45837, Oct. 28, 1977

1 *Gala v. Cui*, 25 Phil. 522; *Springer v. Odlin*, 8 Phil. 344; *Government v. Judge*, 84 Phil. 157, cited in *Moran*, op cit., p.165

2 Sec. 21 (1), *Batas Pambansa Bilang 129*, eff. Aug. 14, 1981; Sec. 4, Rule 65, Sec. 8, Rule 66, Sec. 2, Rule 102, Rules of Court; Sec. 44 (h). *Judiciary Act of 1948*, as amended

3 Sec. 9 (1), *B.P. Blg. 129*; Sec. 4, Rule 65, Sec. 8, Rule 66, Sec. 2, Rule 102, Rules of Court; Sec. 30, *Judiciary Act of 1948*, as amended

4 The restriction has since been removed. Sec. 9 above mentioned provides that the Intermediate Appellate Court shall exercise original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, "whether or not in aid of its appellate jurisdiction."

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