

**M. H. WYLIE AND CAPT. JAMES WILLIAMS, PETITIONERS, VS.
AURORA I. RARANG AND THE HONORABLE INTERMEDIATE
APPELLATE COURT, RESPONDENTS.**

G.R. No. 74135. May 28, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The pivotal issue in this petition centers on the extent of the "immunity from suit" of the officials of a United States Naval Base inside Philippine territory.

In February, 1978, petitioner M. H. Wylie was the assistant administrative officer while petitioner Capt. James Williams was the commanding officer of the U. S. Naval Base in Subic Bay, Olongapo City. Private respondent Aurora I. Rarang was an employee in the Office of the Provost Marshal assigned as merchandise control guard.

M. H. Wylie, in his capacity as assistant administrative officer of the U.S. Naval Station supervised the publication of the "Plan of the Day" (POD) which was published daily by the US Naval Base station. The POD featured important announcements, necessary precautions, and general matters of interest to military personnel. One of the regular features of the POD was the "action line inquiry." On February 3, 1978 the POD published, under the "NAVSTA ACTION LINE INQUIRY" the following:

"Question: I have observed that Merchandise Control inspector/inspectress are (sic) consuming for their own benefit things they have confiscated from Base Personnel. The observation is even more aggravated by consuming such confiscated items as cigarettes and food stuffs PUBLICLY. This is not to mention 'Auring' who is in herself, a disgrace to her division and to the Office of the Provost Marshal. In lieu of this observation, may I therefore, ask if the head of the Merchandise Control Division is aware of this malpractice?

Answer: Merchandise Control Guards and all other personnel are prohibited from appropriating confiscated items for their own consumption or use. Two locked containers are installed at the Main Gate area for deposit of confiscated items and the OPM evidence custodian controls access to these containers.

Merchandise Control Guards are permitted to eat their meals at their worksite due to heavy workload. Complaints regarding merchandise control guards procedures or actions may be made directly at the Office of the Provost Marshal for immediate and necessary action. Specific dates and time along with details of suspected violations would be most appreciated. Telephone 4-3430/4-3234 for further information or to report noted or suspected irregularities. Exhibits E & E-1." (Rollo, pp. 11-12).

The private respondent was the only one who was named "Auring" in the Office of the Provost Marshal. That the private respondent was the same "Auring" referred to in the POD was conclusively proven when on February 7, 1978, petitioner M. H. Wylie wrote her a letter of apology for the "inadvertent" publication. The private respondent then commenced an action for damages in the Court of First Instance of Zambales (now Regional Trial Court) against M. H. Wylie, Capt. James Williams and the U. S. Naval Base. She alleged that the article constituted false, injurious, and malicious defamation and libel tending to impeach her honesty, virtue and

reputation exposing her to public hatred, contempt and ridicule; and that the libel was published and circulated in the English language and read by almost all the U. S. Naval Base personnel. She prayed that she be awarded P300,000.00 as moral damages; exemplary damages which the court may find proper; and P50,000.00 as attorney's fees.

In response to the complaint, the defendants filed a motion to dismiss anchored on three grounds:

- “1. Defendants M. H. Wylie and Capt. James Williams acted in the performance of their official functions as officers of the United States Navy and are, therefore, immune from suit;
2. The United States Naval Base is an instrumentality of the US government which cannot be sued without its consent; and
3. This Court has no jurisdiction over the subject matter as well as the parties in this case.” (Record on Appeal, pp. 133-134)

The motion was, however, denied.

In their answer, the defendants reiterated the lack of jurisdiction of the court over the case.

In its decision, the trial court ruled that the acts of defendants M. H. Wylie and Capt. James Williams were not official acts of the government of the United States of America in the operation and control of the Base but personal and tortious acts which are exceptions to the general rule that a sovereign country cannot be sued in the court of another country without its consent. In short, the trial court ruled that the acts and omissions of the two US officials were not imputable against the US government but were done in the individual and personal capacities of the said officials. The trial court dismissed the suit against the US Naval Base. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants jointly and severally, as follows:

- (1) Ordering defendants M. H. Wylie and Capt. James Williams to pay the plaintiff Aurora Rarang the sum of one hundred thousand (P100,000.00) pesos by way of moral and exemplary damages;
- (2) Ordering defendants M. H. Wylie and Capt. James Williams to pay the plaintiff the sum of thirty thousand (P30,000.00) pesos by way of attorney's fees and expenses of litigation; and
- (3) To pay the costs of this suit.

Counterclaims are dismissed.

Likewise, the suit against the U. S. Naval Base is ordered dismissed.” (Record on Appeal, p. 154)

On appeal, the petitioners reiterated their stance that they are immune from suit since the subject publication was made in their official capacities as officers of the U. S. Navy. They also maintained that they did not intentionally and maliciously cause the questioned publication.

The private respondent, not satisfied with the amount of damages awarded to her, also appealed the trial court's decision.

Acting on these appeals, the Intermediate Appellate Court, now Court of Appeals, modified the trial court's decision, to wit:

"WHEREFORE, the judgment of the court below is modified so that the defendants are ordered to pay the plaintiff, jointly and severally, the sum of 175, 000.00 as moral damages and the sum of P60,000.00 as

exemplary damages. The rest of the judgment appealed from is hereby affirmed in toto. Costs against the defendants-appellants." (Rollo, p. 44)

The appellate court denied a motion for reconsideration filed by the petitioners.

Hence, this petition.

In a resolution dated March 9, 1987, we gave due course to the petition.

The petitioners persist that they made the questioned publication in the performance of their official functions as administrative assistant, in the case of M. H. Wylie, and commanding officer, in the case of Capt. James Williams of the US Navy assigned to the US Naval Station, Subic Bay, Olongapo City and were, therefore, immune from suit for their official actions.

In the case of *United States of America v. Guinto* (182 SCRA 644 [1990]), we discussed the principle of the state immunity from suit as follows:

"The rule that a state may not be sued without its consent, now expressed in Article XVI, Section 3, of the 1987 Constitution, is one of the generally accepted principles of international law that we have adopted as part of the law of our land under Article II, Section 2.

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Even without such affirmation, we would still be bound by the generally accepted principles of international law under the doctrine of incorporation. Under this doctrine, as accepted by the majority of states, such principles are deemed incorporated in the law of every civilized state as a condition and consequence of its membership in the society of nations. Upon its admission to such society the state is automatically obligated to comply with these principles in its relations with other states.

As applied to the local state, the doctrine of state immunity is based on the justification given by Justice Holmes that 'there can be no legal right against the authority which makes the law on which the right depends.' (*Kawanakoa v. Polybank*, 205 U.S. 349) There are other practical reasons for the enforcement of the doctrine. In the case of the foreign state sought to be impleaded in the local jurisdiction, the added inhibition is expressed in the maxim *par in parem, non habet imperium*. All states are sovereign equals and cannot assert jurisdiction over one another. A contrary disposition would, in the language of a celebrated case, 'unduly vex the peace of nations.' (*Da Haber v. Queen of Portugal*, 17 Q. B. 171)

While the doctrine appears to prohibit only suits against the state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties. The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded. (*Garcia v. Chief of Staff*, 16 SCRA 120) In such a situation, the state may move to dismiss the complaint on the ground that it has been filed without its content.

The doctrine is sometimes derisively called 'the royal prerogative of dishonesty' because of the privilege it grants the state to defeat any legitimate claim against it by simply invoking its non-suability. That is hardly fair, at least in democratic societies, for the state is not an unfeeling tyrant unmoved by the valid claims of its citizens. In fact, the doctrine is not absolute and does not say the state may not be sued under any circumstance. On the contrary, the rule says that the state may not be sued without its consent, which clearly imports that it may be sued if it consents.

The consent of the state to be sued may be manifested expressly impliedly. Express consent may be embodied in a general law or a special law. Consent is implied when the state enters into a contract it itself commences

litigation.

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The above rules are subject to qualification. Express consent is effected only by the will of the legislature through the medium of a duly enacted statute. (*Republic v. Purisima*, 78 SCRA 470) We have held that not all contracts entered into by the government will operate as a waiver of its non-suability; distinction must be made between its sovereign and proprietary acts. (*United States of America v. Ruiz*, 136 SCRA 487) As for the filing of a complaint by the government, suability will result only where the government is claiming affirmative relief from the defendant. (*Lim v. Brownell*, 107 Phil. 345)" (at pp. 652-655)

In the same case we had opportunity to discuss extensively the nature and extent of immunity from suit of United States personnel who are assigned and stationed in Philippine territory, to wit:

"In the case of the United States of America, the customary rule of international law on state immunity is expressed with more specificity in the RP-US Bases Treaty. Article III thereof provides as follows:

‘It is mutually agreed that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use, operation and defense thereof or appropriate for the control thereof and all the rights, power and authority within the limits of the territorial waters and air space adjacent to, or in the vicinity of, the bases which are necessary to provide access to them or appropriate for their control.’

The petitioners also rely heavily on *Baer v. Tizon* (57 SCRA 1) along with several other decisions, to support their position that they are not suable in the cases below, the United States not having waived its sovereign immunity from suit. It is emphasized that in *Baer*, the Court held:

‘The invocation of the doctrine of immunity from suit of a foreign state without its consent is appropriate. More specifically, insofar as alien armed forces is concerned, the starting point is *Raquiza v. Bradford*, a 1945 decision. In dismissing a habeas corpus petition for the release of petitioners confined by American army authorities, Justice Hilado, speaking for the Court, cited *Coleman v. Tennessee*, where it was explicitly declared: ‘It is well settled that a foreign army, permitted to march through a friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place.’ Two years later, in *Tubb and Tedrow v. Griess*, this Court relied on the ruling in *Raquiza v. Bradford* and cited in support thereof excerpts from the works of the following authoritative writers: Vattel, Wheaton, Hall, Lawrence, Oppenheim, Westlake, Hyde, and McNair and Lauterpacht. Accuracy demands the clarification that after the conclusion of the Philippine American Military Bases Agreement, the treaty provisions should control on such matter, the assumption being that there was a manifestation of the submission to jurisdiction on the part of the foreign power whenever appropriate. More to the point is *Syquia v. Almeda Lopez*, where plaintiffs as lessors sued the Commanding General of the United States Army in the Philippines seeking the restoration to them of the apartment buildings they owned leased to the United States armed forces station in the Manila area. A motion to dismiss on the ground of non-suability was filed and upheld by respondent Judge. The matter was taken to this Court in a mandamus proceeding. It failed. It was the ruling that respondent Judge acted correctly considering that the ‘action must be considered as one against the U.S. Government.’ The opinion of Justice Montemayor continued: ‘It is clear that the courts of the Philippines including the Municipal Court of Manila have no jurisdiction over the present case for unlawful detainer. The question of lack of jurisdiction was raised and interposed at the very beginning of the action. The U.S. Government has not given its consent to the filing of this suit which is essentially against her, though not in name. Moreover, this is not only a case of a citizen filing a suit against his own Government without the latter’s consent but it is of a citizen filing an action against a foreign government without said government’s consent, which renders more obvious the lack of jurisdiction of the courts of his country. The principles of law behind this rule are so elementary and of such general acceptance that we

deem it unnecessary to cite authorities in support thereof.’

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It bears stressing at this point that the above observations do not confer on the United States of America a blanket immunity for all acts done by it or its agents in the Philippines. Neither may the other petitioners claim that they are also insulated from suit in this country merely because they have acted as agents of the United States the discharge of their official functions.

There is no question that the United States of America, like any other state, will be deemed to have impliedly waived its non-suability if it has entered into a contract in its proprietary or private capacity. It is only when the contract involves its sovereign or governmental capacity that no such waiver may be implied. This was our ruling in *United States of America v. Ruiz*, (136 SCRA 487) where the transaction in question dealt with the improvement of the wharves the naval installation at Subic Bay. As this was a clearly governmental function, we held that the contract did not operate to divest the United States of its sovereign immunity from suit. In the words of Justice Vicente Abad Santos:

‘The traditional rule of immunity excepts a State from being sued in the courts of another State without its consent or waiver. This rule is a necessary consequence of the principles of independence and equality of States. However, the rules of International Law are not petrified; they are constantly developing and evolving. And because the activities of states have multiplied, it has been necessary to distinguish them - between sovereign and governmental acts (*jure imperii*) and private, commercial and proprietary acts (*jure gestionis*). The result is that State immunity now extends only to acts *jure imperii*. The restrictive application of State immunity is now the rule in the United States, the United Kingdom and other states in Western Europe.

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The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs. Stated differently, a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. It does not apply where the contract relates to the exercise of its sovereign functions. In this case the projects are an integral part of the naval base which is devoted to the defense of both the United States and the Philippines, indisputably a function of the government of the highest order; they are not utilized for nor dedicated to commercial or business purposes.’

The other petitioners in the cases before us all aver they have acted in the discharge of their official functions as officers or agents of the United States. However, this is a matter of evidence. The charges against them may not be summarily dismissed on their mere assertion that their acts are imputable to the United States of America, which has not given its consent to be sued. In fact, the defendants are sought to be held answerable for personal torts in which the United States itself is not involved. If found liable, they and they alone must satisfy the Judgment." (At pp. 655-658)

In the light of these precedents, we proceed to resolve the present case.

The POD was published under the direction and authority of the commanding officer, U. S. Naval Station Subic Bay. The administrative assistant, among his other duties, is tasked to prepare and distribute the POD. On February 3, 1978, when the questioned article was published in the POD, petitioner Capt. James Williams was the commanding officer while petitioner M. H. Wylie was the administrative assistant of the US Naval Station at Subic bay.

The NAVSTA ACTION LINE INQUIRY is regular feature of the POD. It is a telephone answering device in the office of the Administrative Assistant. The Action Line is intended to provide personnel access to the

Commanding Officer on matters they feel should be brought to his attention for correction or investigation. The matter of inquiry may be phoned in or mailed to the POD. (TSN, September 9, 1980, pp. 12-13, Jerry Poblón) According to M. H. Wylie, the action line naming "Auring" was received about three (3) weeks prior to its being published in the POD on February 3, 1978. It was forwarded to Rarang's office of employment, the Provost Marshal, for comment. The Provost Marshal office's response "x x x" included a short note stating that if the article was published, to remove the name." (Exhibit 8-A, p. 5) The Provost Marshal's response was then forwarded to the executive officer and to the commanding officer for approval. The approval of the commanding officer was forwarded to the office of the Administrative Assistant for inclusion in the POD. A certain Mrs. Dologmodin, a clerk typist in the office of the Administrative Assistant prepared the smooth copy of the POD. Finally, M. H. Wylie, the administrative assistant signed the smooth copy of the POD but failed to notice the reference to "Auring" in the action line inquiry. (Exh. 8-A, pp. 4-5, Questions Nos.14-15).

There is no question, therefore, that the two (2) petitioners actively participated in screening the features and articles in the POD as part of their official functions. Under the rule that U.S. officials in the performance of their official functions are immune from suit, then it should follow that the petitioners may not be held liable for the questioned publication.

It is to be noted, however, that the petitioners were sued on their personal capacities for their alleged tortious acts in publishing libelous article.

The question, therefore, arises - are American naval officers who commit a crime or tortious act while discharging official functions still covered by the principle of state immunity from suit? Pursuing the question further, does the grant of rights, power, and authority to the United States under the RP - US Bases Treaty cover immunity of its officers from crimes and torts? Our answer is No.

Killing a person in cold blood while on patrol duty, running over a child while driving with reckless imprudence on an official trip, or slandering a person during office hours could not possibly be covered by the immunity agreement. Our laws and, we presume, those of the United States do not allow the commission of crimes in the name of official duty.

The case of *Chavez v. Sandiganbayan*, 193 SCRA 282 [1991] gives the law on immunity from suit of public officials:

"The general rule is that public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted ultra vires or where there is showing of bad faith.

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"Moreover, the petitioner's argument that the immunity proviso under Section 4(a) of Executive Order No. 1 also extends to him is not well-taken. A mere invocation of the immunity clause does not ipso facto result in the charges being automatically dropped.

"In the case of *Presidential Commission on Good Government v. Peña* (159 SCRA 556 [1988]) then Chief Justice Claudio Teehankee, added a clarification of the immunity accorded PCGG officials under Section 4(a) of Executive Order No. 1 as follows:

"With respect to the qualifications expressed by Mr. Justice Feliciano in his separate opinion, I just wish to point out two things: First, the main opinion does not claim absolute immunity for the members of the Commission. The cited section of Executive Order No. 1 provides the Commission's members immunity from suit thus: 'No civil action shall lie against the Commission or any member thereof for anything done or omitted in the discharge of

the task contemplated by this order.' No absolute immunity like that sought by Mr. Marcos in his Constitution for himself and his subordinates is herein involved. It is understood that the immunity granted the members of the Commission by virtue of the unimaginable magnitude of its task to recover the plundered wealth and the State's exercise of police power was immunity from liability for damages in the official discharge of the task granted the members of the Commission much in the same manner that judges are immune from suit in the official discharge of the functions of their office. x x x (at pp. 581-582)

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"Immunity from suit cannot institutionalize irresponsibility and non-accountability nor grant a privileged status not claimed by any other official of the Republic. (id., at page 586)

"Where the petitioner exceeds his authority as Solicitor General, acts in bad faith, or, as contended by the private respondent, 'maliciously conspir(es) with the PCGG commissioners in persecuting respondent. Enrile by filing against him an evidently baseless suit in derogation of the latter's constitutional rights and liberties' (Rollo, 417), there can be no question that a complaint for damages does not confer a license to persecute or recklessly injure another. The actions governed by Articles 19, 20, 21, and 32 of the Civil Code on Human Relations may be taken against public officers or private citizens alike. x x x" (pp. 289-291)

We apply the same ruling to this case.

The subject article in the US Newsletter POD dated February 3, 1978 mentions a certain "Auring" as "x x a disgrace to her division and to the Office of the Provost Marshal." The same article explicitly implies that Auring was consuming and appropriating for herself confiscated items like cigarettes and foodstuffs. There is no question that the Auring alluded to in the Article was the private respondent as she was the only Auring in the Office of the Provost Marshal. Moreover, as a result of this article, the private respondent was investigated by her supervisor. Before the article came out, the private respondent had been the recipient of commendations by her superiors for honesty in the performance of her duties.

It may be argued that Captain James Williams as commanding officer of the naval base is far removed in the chain of command from the offensive publication and it would be asking too much to hold him responsible for everything which goes wrong on the base. This may be true as a general rule. In this particular case, however, the records show that the offensive publication was sent to the commanding officer for approval and he approved it. The factual findings of the two courts below are based on the records. The petitioners have shown no convincing reasons why our usual respect for the findings of the trial court and the respondent court should be withheld in this particular case and why their decisions should be reversed.

Article 2176 of the Civil Code prescribes a civil liability for damages caused by a person's act or omission constituting fault or negligence, to wit:

"Article 2176. Whoever by act or omission, causes damage to another, there being fault nor negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

"Fault" or "negligence" in this Article covers not only acts "not punishable by law" but also acts criminal in character, whether intentional or voluntary or negligent." (Andamo v. Intermediate Appellate Court, 191 SCRA 19 [1990]).

Moreover, Article 2219(7) of the Civil Code provides that moral damages may be recovered in case of libel, slander or any other form of defamation. In effect, the offended party in these cases is given the right to receive from the guilty party moral damages for injury to his feelings and reputation in addition to punitive or exemplary

damages. (*Occena v. Icamina*, 181 SCRA 328 [1990]). In another case, *Heirs of Basilisa Justiva v. Gustilo*, 7 SCRA 72 [1963], we ruled that the allegation of forgery of documents could be a defamation, which in the light of Article 2219(7) of the Civil Code could by analogy be ground for payment of moral damages, considering the wounded feelings and besmirched reputation of the defendants.

Indeed the imputation of theft contained in the POD dated February 3, 1978 is a defamation against the character and reputation of the private respondent. Petitioner Wylie himself admitted that the Office of the Provost Marshal explicitly recommended the deletion of the name Auring if the article were published. The petitioners, however, were negligent because under their direction they issued the publication without deleting the name "Auring". Such act or omission is *ultra vires* and cannot be part of official duty. It was a tortious act which ridiculed the private respondent. As a result of the petitioners' act, the private respondent, according to the record, suffered besmirched reputation, serious anxiety, wounded feelings and social humiliation, specially so, since the article was baseless and false. The petitioners, alone, in their personal capacities are liable for the damages they caused the private respondent.

WHEREFORE, the petition is hereby DISMISSED. The questioned decision and resolution of the then Intermediate Appellate Court, now Court of Appeals, are AFFIRMED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Feliciano, J., I did not participate in the deliberations.

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