

**ROMULO S. BULAONG AND GIL P. DE GUZMAN, PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS, PEOPLE OF THE PHILIPPINES
AND THE HONORABLE PRESIDING JUDGE, REGIONAL TRIAL COURT,
NATIO...**

G.R. No. 78555. January 30, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dismissing the special civil action for certiorari, prohibition, mandamus with preliminary injunction filed in AC-G.R. No. SP-10449, entitled, "Romulo S. Bulaong and Gil P. de Guzman, Petitioners v. People of the Philippines and the Honorable Presiding Judge, Regional Trial Court, National Capital Judicial Region, Branch CXIV, Pasay City, Respondents."

The antecedent facts in this case as found by the court a quo are as follows:

On March 12, 1984, petitioner Bulaong filed with the Regional Trial Court of Zambales an action for sum of money docketed as Civil Case No. RTC-67-1 against Vicente Vistan, Leonardo Buenaventura and Conrado Sta. Maria. Sometime later, Vicente Vistan also filed a complaint against petitioner Bulaong for rescission of contract with damages. The above-mentioned cases were consolidated and are pending trial.

On November 21, 1984, petitioner Bulaong filed a criminal complaint for estafa with the Office of the City Fiscal of Pasay against Vicente Vistan and Leonardo Buenaventura. The complainant and the defendants filed their affidavit and counter-affidavits respectively.

On January 21, 1985, petitioners Bulaong and his counsel Gil de Guzman submitted to the Office of the City Fiscal of Pasay a reply-affidavit containing statements which were alleged to be libelous. Hence, Vistan and Buenaventura filed a complaint for libel against Bulaong and his counsel de Guzman with the City Fiscal of Pasay. The latter conducted an investigation, and thereafter, filed an information for libel against petitioners on October 11, 1985. The said information was later amended on July 1, 1986. The amended information reads in part:

"AMENDED INFORMATION

"The undersigned Special Prosecutor accuses ROMULO S. BULAONG and GIL P. DE GUZMAN of the crime of LIBEL, committed as follows:"

That on or about the 21st day of January, 1985 in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without justifiable cause and motive, and with malice aforethought and with deliberate intent to impeach the honor, integrity, virtue and reputation of Leonardo Buenaventura and Vicente Vistan, did then and there wilfully, unlawfully and feloniously write and file a reply affidavit in I.S. No. 84-4273 entitled Romulo Bulaong vs. Vicente Vistan, et al. for Estafa with the Office of the City Fiscal, Pasay City, which reply

affidavit is quoted verbatim hereunder, to wit:

‘REPLY AFFIDAVIT

‘I, ROMULO S. BULAONG, of legal age, Filipino, married and with postal address at c/o Room 509 B. Bañas Bldg., 815 Rizal Avenue, Manila, after having sworn to an oath hereby depose and say, THAT:

‘x x x.

‘7. It is very apparent from the acts of respondents to be high calibered and precisioned swindlers preparing forms as instruments of committing ESTAFA, which could not be found in the books of law which he has been doing for the past 36 years, as admitted by him, with impunity deriving unlawful benefits, in cahoot with his co-respondents.

‘x x x.

‘IN TRUTH AND TESTIMONY WHEREOF, I have hereunto set my hand this 21st day of January, 1985 at Pasay City

(Sgd.) ROMULO S. BULAONG

- Affiant -

‘SUBSCRIBED AND SWORN to before me this 21st day of January, 1985, in the City of Pasay.

(Sgd.) MARIANO C. CUNETTA

Assistant Fiscal'

'wherein said Leonardo Buenaventura and Vicente Vistan are indicated as swindlers and which are not material and relevant to the issues involved in the case and therefore are malicious imputations intended to dishonor, discredit and put into public contempt and ridicule said Leonardo Buenaventura and Vicente Vistan.

"Contrary to Law.

"Pasay City, Metro Manila, July 1, 1986." (p. 39, Rollo)

Petitioners moved to quash the above quoted information on the following grounds: 1) that the facts charged do not constitute an offense; and 2) that the fiscal has no authority to file the Information. They further argue that the above-mentioned reply-affidavit was submitted and sworn to by petitioner Bulaong not only because he was required to do so by the investigating fiscal but also because it was in compliance with his legal and moral duty as complainant in the case for estafa against Vistan and Buenaventura in I.S. No. 84-4273, and hence, the reply-affidavit belongs to the class of absolutely privileged communications (pp. 44-59, Rollo).

The assistant city fiscal filed an opposition to the motion to quash filed by petitioners. On August 19, 1986, the Regional Trial Court of Pasay City denied the motion to quash. Petitioners moved to reconsider the said order. However, on October 17, 1976, the Court issued an order denying the motion for reconsideration, inter alia:

"The allegations in the reply-affidavit submitted by the accused in the criminal complaint during the

preliminary investigation are alleged in the information as 'not material and relevant to the issues involved in the case and therefore are malicious imputations ...' Accordingly, the prosecution is entitled to show that the offensive expressions in the defendant's reply-affidavit are not relevant or pertinent and, being libelous, are thus not privileged.

"WHEREFORE, the motion for reconsideration is denied.

"SO ORDERED." (p. 75, Rollo)

Not satisfied with the orders of the trial court, petitioners filed with the respondent Court of Appeals a petition for certiorari, prohibition, mandamus, with preliminary injunction. On April 13, 1987, the Court of Appeals dismissed the petition for lack of merit.

Hence, the instant petition was filed, praying for a reversal of the above mentioned decision, with the petitioners assigning the following errors:

"I. Respondents erred in failing and refusing to determine that a preliminary investigation of the Pasay City Fiscal's office partakes the nature of judicial or official proceedings in I.S. No. 84-4273 to be the subject of absolute privileged communication; and

"II. Respondents erred in denying to petitioners the equal protection clause." (p. 26, Rollo)

We find the petition devoid of merit.

This Court has time and again defined the proper procedure in case of denial of a motion to quash. In any case, certiorari and prohibition are not the correct remedies against an order denying a motion to quash. The defendant should instead, go to trial without prejudice on his part to present the special defenses he had invoked in his motion and, if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law (*Acharon v. Purisima*, No. L-22371, February 26, 1965, 13 SCRA 309).

In the case of *Gamboa v. Cruz*, G.R. No. 56291, June 27, 1988, 162 SCRA 642, 652, We held:

"x x x. Section 1 of Rule 117 of the Rules of Court provides that, upon arraignment, the defendant shall immediately either move to quash the complaint or information or plead thereto, or do both and that, if the defendant moves to quash, without pleading, and the motion is withdrawn or overruled, he should immediately plead, which means that trial must proceed. If, after trial on the merits, judgment is rendered adversely to the movant (in the motion to quash), he can appeal the judgment and raise the same defenses or objections (earlier raised in his motion to quash) which would then be subject to review by the appellate court.

"An order denying a Motion to Acquit (like an order denying a motion to quash) is interlocutory and not a final order. It is, therefore, not appealable. Neither can it be the subject of a petition for certiorari. Such order of denial may only be reviewed, in the ordinary course of law, by an appeal from the judgment, after trial. As stated in *Collins vs. Wolfe* (4 Phil. 534) and reiterated in *Mill vs. Yatco* (101 Phil. 599) the accused, after the denial of his motion to quash, should have proceeded with the trial of the case in the court below, and if final judgment is rendered against him, he could then appeal, and upon such appeal, present the questions which he sought to be decided by the appellate court in a petition for certiorari."

In view thereof, whether or not the alleged libelous statements in the reply-affidavit are covered within the mantle of absolutely privileged communications, is a defense which petitioners could raise upon the trial on the merits, and, if that defense should fail, they could still raise the same on appeal. Consequently, the motion to quash the information for libel on the ground of qualified privilege, duly opposed by the prosecution, is properly denied, as the prosecution is entitled to prove at the trial that there was malice in fact on the part of the petitioners (*Mercado v. CFI of Rizal*, No. L-38753, August 25, 1982, 116 SCRA 93).

ACCORDINGLY, the petition is DENIED and the assailed decision of the respondent Court of Appeals dated April 13, 1987 is hereby AFFIRMED.

SO ORDERED.

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

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