

RODOLFO SUAREZ, PETITIONER, VS. THE COURT OF APPEALS AND CESARIO MANIGBAS, RESPONDENTS.

G.R. No. 80199. June 06, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal by certiorari from the decision[1] of the Court of Appeals condemning petitioner Rodolfo Suarez to pay moral damages, exemplary damages and attorney's fees in favor of private respondent Cesario Manigbas.

Respondent Manigbas used to be a security guard of the D'Robe Security Agency of which petitioner, Capt. Rodolfo Suarez, was the general manager. He was assigned to the Security Bank and Trust Agency branch at Sucat, Paranaque, Metro Manila. During his tour of duty with the said bank, he alleged that his employer pulled him out of his assignment and later dismissed him. This dismissal was contested by him before the National Labor Relations Commission.

Respondent found another employment with the RP Guardian Security Agency. While he was with his second employer, petitioner Suarez signed and sent a letter to the Philippine Association of Detective and Protective Agency Operators, (PADPAO), an association of security agencies, which reported misdemeanors committed by several of its guards, including the respondent. The remarks pertaining to respondent Manigbas states, to wit: "Padding payroll; used to leave his post every weekend without a reliever nor permission from the Agency; misrepresentation on the submission of Daily Time Record." (p. 19, Memorandum of Petitioner) Consequently, plaintiff was dismissed by the RP Guardian Security Agency and was unemployed for six (6) months until re-hired by the said agency but on temporary basis. Plaintiff claimed that the letter of defendant Suarez to the PADPAO posed him to public ridicule, inconvenience, humiliation and contempt which resulted in his being blacklisted by security agencies giving him difficulty in finding employment and causing him mental torture and anguish.

Petitioner Suarez denied that respondent was summarily relieved or dismissed from employment. He claimed that after his relief of his assignment with the Security Bank and Trust Company branch at Sucat, Paranaque, Metro Manila, the respondent refused to accept re-assignment. Respondent's relief was done in accordance with the company rule not to allow guards to stay for a long time at one post for security reasons. The letter complained of was a privileged communication consistent with the call of the PADPAO to make available to it information on misdemeanors of security guards. It was written in good faith and without any intention to cause damage to the respondent.

The trial court rendered its decision in favor of the respondent awarding moral damages in the amount of P10,000; exemplary damages in the amount of P3,000; actual damages in the amount of P1,000; attorney's fees in the amount of P2,000 and costs. On appeal to respondent court, the said decision was affirmed with the modification eliminating the award of actual damages.

Hence, this petition.

Basically, petitioner raises the following issues:

1. Whether or not the regional trial court had no jurisdiction over the case at bar considering that the total money claims of respondent is only ten thousand pesos (P10,000); and
2. Whether or not the letter sent to PADPAO is covered by the rule on privileged communication.

In the resolution of August 22, 1988, the petition was given due course and the parties were required to submit their respective memoranda within thirty (30) days from notice thereof. Petitioner filed his memorandum of November 7, 1988 while respondent filed his on October 27, 1988.

Anent the issue of lack of jurisdiction of the court a quo in entertaining this case, petitioner's contentions are devoid of merit. While though it is clear from the complaint filed that the total amount claimed by respondent Manigbas is ten thousand pesos (P10,000) and that under BP 129, the Regional Trial Courts shall exercise exclusive original jurisdiction in all cases in which the demand, exclusive of interest and cost, or the value of the property in controversy, amounts to more than twenty thousand pesos (P20,000), petitioner is estopped from invoking this rule since he never questioned this flaw until this case was appealed to the respondent Court of Appeals from the adverse decision of the trial court. It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. The only exception is where the party raising the issue is barred by estoppel. (*Tijam v. Sibonghanoy*, 23 SCRA 29, reiterated in *Solid Homes, Inc. v. Payawal and Court of Appeals*, G.R. No. 84811, August 29, 1989).

While petitioner could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent. Upon the premises, petitioner cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily. (*Tijam v. Sibonghanoy*, supra)

With regard to the issue on whether or not the letter sent to the PADPAO and signed by petitioner, considering the derogatory remarks on the private respondent, is covered by the protective mantle of privileged communication, the answer is in the negative. Petitioner, in support of his contention that such letter is privileged communication, cites the case of *U.S. v. Bustos*, 37 Phil. 731, wherein the court laid down the following:

"A communication made in good faith upon any subject matter in which the party making the communication has an interest or concerning which he has a duty is privileged if made to a person having a corresponding interest or duty, although it contains incriminatory or derogatory matter which, without the privilege, would be libelous and actionable." (p. 21, Memorandum for the Petitioner)

And also the case of *Santiago v. Calvo*, 48 Phil. 919, where the Court held:

"Even when the statements are found to be false, if there is probable cause for belief in their truthfulness and the charge is made in good faith, the mantle of privilege may still cover the mistake of the individual. The privilege is not defeated by the mere fact that the communication is made in intemperate terms. A privileged communication should not be subjected to microscopic examination to discover grounds of malice or falsity." (p. 22, Memorandum for the Petitioner)

Petitioner contends that the alleged libelous letter to the PADPAO is a privileged communication, hence, not actionable. We believe that the letter sent is not really a privileged communication.

In the case of *Lu Chu Sing vs. Lu Tiong Gui*, 76 Phil. 669, the Court said that "the fact that a communication is privileged does not mean that it is not actionable, the privileged character simply does away with the presumption

of malice which the plaintiff has to prove in such a case." And the evidence necessary to prove malice on the part of the writer of a privileged communication is not strictly documentary for it may be either extrinsic, internal, and circumstantial, like any other fact necessary to make out plaintiff's case (U.S. vs. Canete, 38 Phil. 253).

As aptly put by the respondent Court:

"In the present case, malice is strongly shown in appellant's writing the letter which put the person of the appellee in bad light before his peers and the security agencies who may have come across said letter in the course of his employment. The said letter accused the appellee of "padding payroll - Used to leave his post every weekend and without a reliever nor permission from the agency. Misrepresentation on the submission of Daily Time Record." These charges, however, were not duly substantiated by any proof contrary to the PADPAO guidelines that the report on security guards been based on "actual facts and not on imaginary or personal considerations." (Exh. 2). Besides, the letter was written almost three months after appellee's employment with the D'Robe Security Agency of which the appellant was the general manager had already been terminated. In fact, appellee's termination caused him to file a labor case against the D'Robe Security Agency with the then Ministry of Labor and Employment docketed as NLRC NRC No. 5-3833-82 and resulted in the payment of his back wages. With this in mind, appellant was guided and motivated by revenge in writing and sending the derogatory letter to the PADPAO which, in the guise of an official communication was designed to damage appellee's name as well as compromise his future employment with any security agency associated with the PADPAO. In other words, this would result in the blacklisting of appellee by prospective employers. In fact, appellee's employment with the RP Guardian Security Agency hangs on a balance. As a consequence, he was dismissed; although he was re-hired after six months this was on a temporary basis pending the outcome of the present case. These significant facts evidently betray the conduct of appellant who shall be denied the benefits of qualified privilege and justify the imposition of personal liability to the appellee.

"A private communication, maliciously made by one person to another, although in the performance of a legal, moral or social duty, is not privileged (Imperial vs. Ziga, L-19726, April 13, 1967, 19 SCRA 726). According to Justice Street in his work, Foundation of Legal Liability, quoted in U.S. vs. Canete, et al., (38 Phil. 253), malice is a "term used to indicate the fact that the defamer is prompted by personal ill-will or spite, and speaks not merely in response to duty, but merely to injure the reputation of the person defamed (People vs. De los Reyes, (CA) 47 O.G. 3569)."

(pp. 32-33, Rollo)

PREMISES CONSIDERED, this petition is hereby DENIED for lack of merit. The questioned decision of respondent Court of Appeals is AFFIRMED in toto.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Justice Jorge R. Coquia and concurred in by Justices Josue N. Bellosillo and Venancio D. Aldecoa, Jr.

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