

**MAXIMO V. SOLIVEN, ANTONIO V. ROCES FREDERICK K. AGCAOILI,
AND GODOFREDO L! MANZANAS, PETITIONERS, VS. THE HON.
RAMON P] MAKASIAR, PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT OF...**

G.R. No. 82585. November 14, 1988

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PER CURIAM:

In these consolidated cases, three principal issues were raised: (1) whether or not petitioners were denied due process when informations for libel were filed against them although the finding of the existence of a prima facie case was still under review by the Secretary of Justice and, subsequently, by the President; (2) whether or not the constitutional rights of Beltran were violated when respondent RTC judge issued a warrant for his arrest without personally examining the complainant and the witnesses, if any, to determine probable cause; and (3) whether or not the President of the Philippines, under the Constitution, may initiate criminal proceedings against the petitioners through the filing of a complaint-affidavit.

Subsequent events have rendered the first issue moot and academic. On March 30, 1988, the Secretary of Justice denied petitioners' motion for reconsideration and upheld the resolution of the Undersecretary of Justice sustaining the City Fiscal's finding of a prima facie case against petitioners. A second motion for reconsideration filed by petitioner Beltran was denied by the Secretary of Justice on April 7, 1988. On appeal, the President, through the Executive Secretary, affirmed the resolution of the Secretary of Justice on May 2, 1988. The motion for reconsideration was denied by the Executive Secretary on May 16, 1988. With these developments, petitioner's contention that they have been denied the administrative remedies available under the law has lost factual support.

It may also be added that with respect to petitioner Beltran, the allegation of denial of due process of law in the preliminary investigation is negated by the fact that instead of submitting his counter-affidavits, he filed a "Motion to Declare Proceedings Closed," in effect waiving his right to refute the complaint by filing counter-affidavits. Due process of law does not require that the respondent in a criminal case actually file his counter-affidavits before the preliminary investigation is deemed completed.

All that is required is that the respondent be given the opportunity to submit counter-affidavits if he is so minded.

The second issue, raised by petitioner Beltran, calls for an interpretation of the constitutional provision on the issuance of warrants of arrest. The pertinent provision reads:

Art. III, Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The addition of the word "personally" after the word "determined" and the deletion of the grant of authority by the 1973 Constitution to issue warrants to "other responsible officers as may be authorized by law," has apparently convinced petitioner Beltran that the Constitution now requires the judge to personally examine the complainant and his witnesses in his determination of probable cause for the issuance of warrants of arrest. This is not an accurate interpretation.

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

Sound policy dictates this procedure, otherwise judges would be untuly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts.

On June 30, 1987, the Supreme Court unanimously adopted Circular No. 12, setting down guidelines for the issuance of warrants of arrest. The procedure therein provided is reiterated and clarified in this resolution.

It has not been shown that respondent judge has deviated from the prescribed procedure. Thus, with regard to the issuance of the warrants of arrest, a finding of grave abuse of discretion amounting to lack or excess of jurisdiction cannot be sustained.

Anent the third issue, petitioner Beltran argues that "the reasons which necessitate presidential immunity from suit impose a correlative disability to file suit." He contends that if criminal proceedings ensue by virtue of the President's filing of her complaint-affidavit, she may subsequently have to be a witness for the prosecution, bringing her under the trial court's jurisdiction. This, continues Beltran, would in an indirect way defeat her privilege of immunity from suit, as by testifying on the witness stand, she would be exposing herself to possible contempt of court or perjury.

The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention.

But this privilege of immunity from suit, pertains to the President by virtue of the office and may be invoked only by the holder of the office; not by any other person in the President's behalf. Thus, an accused in a criminal case in which the President is complainant cannot raise the presidential privilege as a defense to prevent the case from proceeding against such accused.

Moreover, there is nothing in our laws that would prevent the President from waiving the privilege. Thus, if so minded the President may shed the protection afforded by the privilege and submit to the court's jurisdiction. The choice of whether to exercise the privilege or to waive it is solely the President's prerogative. It is a decision that cannot be assumed and imposed by any other person.

As regards the contention of petitioner Beltran that he could not be held liable for libel because of the privileged character of the publication, the Court reiterates that it is not a trier of facts and that such a defense is best left to

the trial court to appreciate after receiving the evidence of the parties.

As to petitioner Beltran's claim that to allow the libel case to proceed would produce a "chilling effect" on press freedom, the Court finds no basis at this stage to rule on the point.

The petitions fail to establish that public respondents, through their separate acts, gravely abused their discretion as to amount to lack of jurisdiction. Hence, the writs of certiorari and prohibition prayed for cannot issue.

WHEREFORE, finding no grave abuse of discretion amounting to excess or lack of jurisdiction on the part of the public respondents, the Court Resolved to DISMISS the petitions in G. R. Nos. 82585, 82827 and 83979. The Order to maintain the status quo contained in the Resolution of the Court en bane dated April 7, 1988 and reiterated in the Resolution dated April 26, 1988 is LIFTED.

Fernan, C. J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., J., please see separate opinion

SEPARATE OPINION

GUTIERREZ, JR., J.,

I concur with the majority opinion insofar as it resolves the three principal issues mentioned in its opening statement. However, as to the more important issue on whether or not the prosecution of the libel case would produce a "chilling effect" on press freedom, I beg to reserve my vote. I believe this is the more important issue in these petitions and it should be resolved now rather than later.

Consistent with our decision in *Salonga v. Cruz Paño* (134 SCRA 438 [1985]), the Court should not hesitate to quash a criminal prosecution in the interest of more enlightened and substantial justice where it is not alone the criminal liability of an accused in a seemingly minor libel case which is involved but broader considerations of governmental power versus a preferred freedom.

We have in these four petitions the unusual situation where the highest official of the Republic and one who enjoys unprecedented public support asks for the prosecution of a newspaper columnist, the publisher and chairman of the editorial board, the managing editor, and the business manager in a not too indubitable a case for alleged libel.

I am fully in accord with an all out prosecution if the effect will be limited to punishing a newspaperman who, instead of observing accuracy and fairness, engages in unwarranted personal attacks, irresponsible twisting of facts, or malicious distortions of half-truths which tend to cause dishonor, discredit, or contempt of the complainant. However, this case is not a simple prosecution for libel. We have as complainant a powerful and popular President who heads the investigation and prosecution service and appoints members of appellate courts but who feels so terribly maligned that she has taken the unorthodox step of going to court in spite of the invocations of freedom of the press which would inevitably follow.

I believe that this Court should have acted on this issue now instead of leaving the matter to fiscals and defense lawyers to argue before a trial judge.

There is always bound to be harassment inherent in any criminal prosecution. Where the harassment goes beyond the usual difficulties encountered by any accused and results in an unwillingness of media to freely criticize

government or to question government handling of sensitive issues and public affairs, this Court and not a lower tribunal should draw the demarcation line.

As early as March 8, 1918, the decision in *United States v. Bustos* (37 Phil. 731) stated that "(c)omplete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; the wound can be assuaged with the balm of a clear conscience." The Court pointed out that while defamation is not authorized, criticism is to be expected and should be borne for the common good.

In *People v. Perfecto* (43 Phil. 887 [1922]), the Court stated:

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"x x x No longer is there a Minister of the Crown or a person in authority of such exalted position that the citizen must speak of him only with bated breath. 'In the eye of our Constitution and laws, every man is a sovereign, a ruler and a freeman, and has equal rights with every other man.'" (at p. 900)

In fact, the Court observed that high official position, instead of affording immunity from slanderous and libelous charges would actually invite attacks by those who desire to create sensation. It would seem that what would ordinarily be slander if directed at the typical person should be examined from various perspectives if directed at a high government official. Again, the Supreme Court should draw this fine line instead of leaving it to lower tribunals.

This Court has stressed as authoritative doctrine in *Elizalde v. Gutierrez* (76SCRA448 [1977]) that a prosecution for libel lacks justification if the offending words find sanctuary within the shelter of the free press guaranty. In other words, a prosecution for libel should not be allowed to continue, where after discounting the possibility that the words may not be really that libelous, there is likely to be a chilling effect, a potentially inhibiting factor on the willingness of newspapermen, especially editors and publishers to courageously perform their critical role in society. t> instead of merely reading more carefully what a columnist writes in his daily column, the editors tell their people to lay off certain issues or certain officials, the effect on a free press would be highly injurious.

Because many questions regarding press freedom are left unanswered by our resolution, I must call attention to our decisions which caution that "no inroads on press freedom should be allowed in the guise of punitive action visited on what otherwise should be characterized as libel." (*Lopez v. Court of Appeals*, 34 SCRA 117 [1970]; See also the citations in *Elizalde v. Gutierrez*, supra).

The United States Supreme Court is even more emphatic, to wit:

"*In deciding the question now, we are compelled by neither precedent nor policy to give any more weight to the epithet 'libel' than we have to other 'mere labels' of state law. *N.A.A.C.P. v. Button*, 371 US 415, 429, 9L ed 2d 405, 415, 83 S Ct 328. Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment.

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"Those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law — the argument of force in its worst form x x x.

"Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well

include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials, x x x. " (at pp. 700-701)

Shunting aside the individual liability of Mr. Luis Beltran, is there a prima facie showing that Messrs. Maximo Soliven, Antonio V. Roces, Frederick K. Agcaoili, and Godofredo L. Manzanias knowingly participated in a wilful purveying of falsehood? Considering the free speech aspects of these petitions, should not a differentiated approach to their particular liabilities be taken instead of lumping up everybody with the offending columnist? I realize that the law includes publishers and editors but perhaps the "chilling effect" issue applies with singular effectivity to publishers and editors vis-a-vis newspaper columnists. There is no question that, ordinarily, libel is not protected by the free speech clause but we have to understand that some provocative words, which if taken literally may appear to shame or disparage a public figure, may really be intended to provoke debate on public issues when uttered or written by a media personality. Will not a criminal prosecution in the type of case now before us dampen the vigor and limit the variety of public debate? There are many other questions arising from this unusual case which have not been considered.

I, of course, concur with the Court's opinion because it has decided to limit the issues to narrowly drawn ones. I see no reason to disagree with the way the Court has resolved them. The first issue on prematurity is moot. The second issue discusses a procedure now embodied in the recently amended Rules of Court on how a Judge should proceed before he issues a warrant of arrest. Anent the third issue, considerations of public policy dictate that an incumbent President should not be sued. At the same time, the President cannot stand by helplessly bereft of legal remedies if somebody vilifies or maligns him or her.

The Court has decided to defer the "chilling effect" issue for a later day. To this, I take exception. I know that most of our tiscals and judges are courageous individuals who would not

allow any considerations of possible consequences to their careers stand in the way of public duty. But why should we subject them to this problem? And why should we allow possibility of the trial court treating and deciding the case as one for ordinary libel without bothering to fully explore the more important areas of concern, the extremely difficult issues involving government power and freedom of expression.

However, since we have decided to defer the "chilling effect" issue for a later day, I limit myself to reiterating the dissenting words of Mr. Justice Jackson in the American case of *Beaurnhais v. Illinois* (343 U. S. 250) when he said:

"If one can claim to announce the judgment of legal history on any subject, it is that criminal libel laws are consistent with the concept of ordered liberty only when applied with safeguards evolved to prevent their invasion of freedom of expression."

In the trial of the libel case against the petitioners, the safeguards in the name of freedom of expression should be faithfully applied.

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