

DENNIS L. LAO, PETITIONER, VS. HON. COURT OF APPEALS, JUDGE FLORENTINO FLOR, REGIONAL TRIAL COURT, BRANCH 89 OF MORONG, RIZAL, BENJAMIN L. ESPIRITU, MANUEL QUERUBIN AND CHAN TON...

G.R. No. 82808. July 11, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

For being a witness in an unsuccessful estafa case which his employer filed against a debtor who had defaulted in paying his just obligation, the petitioner was sued, together with his employer, for damages for malicious prosecution. The issue in this case is whether the damages awarded to the defaulting debtor may be satisfied by execution against the employee's property since his employer's business has already folded up.

Petitioner Dennis Lao was an employee of the New St. Joseph Lumber & Hardware Supply, hereinafter called St. Joseph Lumber, owned by the private respondent, Chan Tong. In January 1981, St. Joseph Lumber filed a collection suit against a customer, the private respondent, Benjamin Espiritu, for unpaid purchases of construction materials from St. Joseph Lumber.

In November 1981, upon the advice of its lawyer, St. Joseph Lumber filed a criminal complaint for estafa against Espiritu, based on the same transaction. Since the petitioner was the employee who transacted business with Espiritu, he was directed by his employer, the firm's owner, Chan Tong, to sign the affidavit or complaint prepared by the firm's lawyer, Attorney Manuel Querubin.

Finding probable cause after conducting a preliminary investigation of the charge, the investigating fiscal filed an information for estafa in the Court of First Instance of Quezon City against Espiritu. The case was however later dismissed because the court believed that Espiritu's liability was only civil, not criminal.

On April 12, 1984, Espiritu filed a complaint for malicious prosecution against the petitioner and St. Joseph Lumber, praying that the defendants be ordered to pay him P500,000 as moral damages, P10,000 as actual damages, and P100,000 as attorney's fees.

In his answer to the complaint, the petitioner alleged that he acted only as agent or employee of St. Joseph Lumber when he executed the affidavit which his employer submitted to the investigating fiscal who conducted the preliminary investigation of his employer's estafa charge against Espiritu.

The pre-trial of the case was set on October 30, 1984. Since the defendants and their counsel failed to appear in court, they were declared in default.

On November 11, 1984, the defendants filed a motion for reconsideration of the order of default.

On November 13, 1984, the motion was granted, and the order of default was set aside.

On January 16, 1985, the defendants, including herein petitioner Lao, and their counsel, again failed to attend the pre-trial despite due notice to the latter who, however, failed to notify Lao. They were once more declared in default. The private respondent was allowed to present his evidence ex parte.

On January 22, 1985, a decision was rendered by the trial court in favor of Espiritu ordering the defendants Lao and St. Joseph Lumber to pay jointly and severally to Espiritu the sums of P100,000 as moral damages, P5,000 as attorney's fees, and costs.

Petitioner's motion for reconsideration of the decision was denied by the trial court.

On February 25, 1985, Lao filed a motion for new trial on the ground of accident and insufficiency of evidence, but it was denied by the trial court.

He appealed to the Court of Appeals (CA-G.R. CV No. 06796, "Benjamin L. Espiritu, plaintiff-appellee vs. Dennis Lao and New St. Joseph Lumber and Hardware Supply, defendants-appellants"). The appellate court dismissed his appeal on May 21, 1987. He filed this special civil action of certiorari and prohibition to partially annul the appellate court's decision and to enjoin the execution of said decision against him. The petitioner avers that the Court of Appeals erred:

1. in not holding that he (petitioner Lao) has a valid defense to the action for malicious prosecution in Civil Case No. 84-M;
2. in not holding that he was deprived of a day in court due to the gross ignorance, negligence and dereliction of duty of the lawyer whom his employer hired as his and the company's counsel, but who failed to protect his interest and even acted in a manner inimical to him; and
3. in not partially annulling the decision of the trial court dated January 22, 1985 insofar as he is concerned.

The petition is meritorious.

Lao had a valid defense to the action for malicious prosecution (Civil Case No. 84-M) because it was his employer, St. Joseph Lumber, not himself, that was the complainant in the estafa case against Espiritu. It was Chan Tong, the owner of the St. Joseph Lumber, who, upon advice of his counsel, filed the criminal complaint against Espiritu. Lao was only a witness in the case. He had no personal interest in the prosecution of Espiritu for he was not the party defrauded by Espiritu. He executed the affidavit which was used as basis of the criminal charge against Espiritu because he was the salesman who sold the construction materials to Espiritu. He was only an agent of St. Joseph Lumber, hence, not personally liable to the party with whom he contracted (Art. 1897, Civil Code, Philippine Products Co. vs. Primateria Societe Anonyme, 22 Phil. 698).

"To maintain an action for damages based on malicious prosecution, three elements must be present: First, the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action was finally terminated with an acquittal; second, that in bringing the action, the prosecutor acted without probable cause; and third, the prosecutor was actuated or impelled by legal malice" (Ferrer vs. Vergara, 52 O.G. 291).

Lao was only a witness, not the prosecutor in the estafa case. The prosecutor was his employer, Chan Tong or the St. Joseph Lumber.

There was probable cause for the charge of estafa against Espiritu, as found and certified by the investigating fiscal himself.

Lao was not motivated by malice in making the affidavit upon which the fiscal based the filing of the information against Espiritu. He executed it as an employee, a salesman of the St. Joseph Lumber from whom Espiritu made

his purchases of construction materials and who, therefore, had personal knowledge of the transaction. Although the prosecution of Espiritu for estafa did not prosper, the unsuccessful prosecution may not be labelled as malicious. "Sound principles of justice and public policy dictate that persons shall have free resort to the courts for redress of wrongs and vindication of their rights without later having to stand trial for instituting prosecutions in good faith" (Buenaventura vs. Sto. Domingo, 103 Phil. 239).

There is merit in petitioner's contention that he was deprived of his day in court in the damage suit filed by Espiritu, due to the gross ignorance, negligence, and dereliction of duty of Attorney Manuel Querubin whom his employer had hired to act as counsel for him and the St. Joseph Lumber. However, Attorney Querubin neglected to defend Lao. He concentrated on the defense of the company and completely forgot his duty to defend Lao as well. He never informed Lao about the pre-trial conferences. In fact, he (Attorney Querubin) neglected to attend other pre-trial conferences set by the court.

When adverse judgment was entered by the court against Lao and the lumber company, Attorney Querubin did not file a motion for reconsideration of the decision. He allowed it to become final, because anyway Espiritu would not be able to satisfy his judgment against Chan Tong who had informed his lawyer that the St. Joseph Lumber was insolvent, had gone out of business, and did not have any leviable assets. As a result, Espiritu levied on the petitioner's car to satisfy the judgment in his favor since the company itself had no more assets that he could seize.

In view of the foregoing circumstances, the judgment against Lao was a nullity and should be set aside. Its execution against the petitioner cannot be allowed to proceed.

WHEREFORE, judgment is hereby rendered partially setting aside the decision of the Court of Appeals dated May 21, 1987, insofar as it declared the petitioner, Dennis Lao, solidarily liable with St. Joseph Lumber to pay the damages awarded to the private respondent Benjamin Espiritu. Said petitioner is hereby absolved from any liability to the private respondent arising from the unsuccessful prosecution of Criminal Case No. Q-20086 for estafa against said private respondent. Costs against the private respondent.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

Gancayco, J., on leave.

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