

KHOSROW MINUCHER, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND ARTHUR W. SCALZO, JR., RESPONDENTS.*G.R. No. 97765. September 24, 1992*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-97765/>**DAVIDE, JR., J.:**

May a complaint for damages be dismissed on the sole basis of a statement contained in a Diplomatic Note, belatedly issued after an answer to the said complaint had already been filed, that the defendant was a member of the diplomatic staff of the United States Diplomatic Mission in the Philippines at the time the cause of action accrued?

This is the issue in the instant petition.

On 3 August 1988, petitioner filed with the Regional Trial Court (RTC) of Manila a complaint for damages against private respondent Arthur Scalzo, Jr.. The case was docketed as Civil Case No. 88-45691 and was raffled off to Branch 19 of said court.[1] Petitioner alleges therein that he was the Labor Attache of the Embassy of Iran in the Philippines "prior to the Ayatollah Khomeini regime." On 13 May 1986, private respondent, then connected with the American Embassy in Manila, was introduced to him by a certain Jose Iñigo, an informer belonging to the military intelligence community, with whom petitioner had several business transactions involving Iranian products like carpets, caviar and others. Iñigo had previously sought petitioner's assistance in connection with charges of illegal recruitment. According to Iñigo, private respondent was purportedly interested in buying Iranian products, namely caviar and carpets. On this same occasion, petitioner complained to the private respondent about the problems the former was then encountering with the American Embassy regarding the expired visas of his wife and fellow Iranian, Abbas Torabian. Offering his help, private respondent gave the petitioner a calling card showing that the former is an agent of the Drug Enforcement Administration (DEA), Department of Justice, of the United States of America assigned to the American Embassy in Manila with official contacts with a certain Col. Dumlao, head of the Anti-Narcotics Command, Philippine Constabulary. Private respondent also expressed his intent to purchase two (2) kilos of caviar worth P10,000.00 and informed the petitioner that he might have prospective buyers for these goods; he further promised to arrange for the renewal of the aforesaid visas for a \$2,000.00 fee. On 19 May 1986, private respondent invited petitioner to dinner at Mario's Restaurant in Makati, Metro Manila; the petitioner accepted. During the said dinner held the very next day, both discussed politics and business. Specifically, private respondent told petitioner that he wanted to purchase an additional two hundred (200) grams of caviar and inquired about his commission for selling petitioner's carpets; petitioner promised a 10% commission based on profits.

In the evening of 26 May 1986, private respondent came to petitioner's residence and asked to be entrusted with a pair of Persian silk carpets with a floor price of \$24,000.00 each, for which he had a buyer. The following day, private respondent returned to petitioner's residence, took the carpets and gave the latter \$24,000.00; after about an hour, private respondent returned, claimed that he had already made arrangements with his contacts at the American Embassy concerning the visas and asked for \$2,000.00. He was given this amount. It turned out,

however, that private respondent had prepared an elaborate plan to frame-up the petitioner and Abbas Torabian for alleged heroin trafficking; both were falsely arrested by private respondent and some American and Filipino police officers, and were taken to Camp Crame in their underwear. Private respondent and his companions took petitioner's three (3) suitcases containing various documents, his wallet containing money and the keys to his house and car, as well as the \$24,000.00 which private respondent had earlier delivered to him. Petitioner and Torabian were handcuffed together for three (3) days and were not given food and water; they were asked to confess to the possession of heroin or else they would be jailed or even executed by Iranian terrorists. Consequently, the two were charged for the violation of Section 4 of R.A. No. 6425 (Dangerous Drugs Act of 1972) before the Regional Trial Court of Pasig. They were, however, acquitted by the said court on 8 January 1988. Private respondent testified for the prosecution in the said case.

Petitioner further alleges in his complaint that private respondent falsely testified against him in the criminal case. The former also avers that charges of unlawful arrest, robbery and estafa or swindling have already been filed against the private respondent.

He therefore prays for actual and compensatory damages of not less than P480,000.00 (\$24,000.00) representing the fair market value of the Persian silk carpet and \$2,000.00 representing the refund of the amount he had given for the visas; moral damages in the amount of P5 million; exemplary damages in the sum of P100,000.00 and attorney's fees of at least P200,000.00 to answer for litigation expenses incurred for his defense in the criminal case and for the prosecution of the civil case.

On 14 September 1988, private respondent's counsel, the law firm LUNA, SISON AND MANAS, filed a Special Appearance and Motion alleging therein that since the private respondent is an agent of the Drug Enforcement Administration of the United States of America, and the acts and omissions complained of were performed by him in the performance of official functions, the case is now under study by the Departments of State and Justice in Washington, D.C. for the purpose of determining what defenses would be appropriate; said counsel also prayed that the period to answer be extended to 13 October 1988.[2] This prayer was granted in the 16 September 1988 order of the court.

On 12 October 1988, private respondent's aforesaid counsel filed another Special Appearance and Motion seeking a further extension of the period to answer to 28 October 1988 because the law firm had not yet received the decision of the Departments of State and Justice.[3]

On 27 October 1988, private respondent's counsel filed a Special Appearance to Quash Summons[4] alleging therein that: "The action being a personal action for damages arising from an alleged tort, the defendant being outside the Philippines and not being a resident of the Philippines, Defendant is beyond the processes of this court," and praying that the summons issued be quashed. The trial court denied the motion in its Order of 13 December 1988.[5] Unsatisfied with the said order, private respondent filed a petition for certiorari with the Court of Appeals which was docketed as C.A.-G.R. SP No. 17023. In its Decision promulgated on 6 October 1989, the Court of Appeals dismissed the petition for lack of merit.[6] Respondent thus sought a review of the said decision by filing a petition with this Court which was docketed as G.R. No. 91173. Said petition was, however, dismissed by this Court in the Resolution of 20 December 1989 for non-compliance with paragraph 2 of Circular No. 1-88; moreover, respondent failed to show that the Court of Appeals had committed any reversible error in the questioned judgment.[7]

On 9 March 1990, private respondent filed with the trial court his Answer in Civil Case No. 88-46591[8] wherein he denies the material allegations in the complaint, sets forth the following Affirmative Defenses:

"The Complaint fails to state a cause of action: in having plaintiff and Abbas Torabian arrested on May 27,

1986 and detained at Camp Crame; a quantity of heroin, seized from plaintiff by Philippine police authorities and in seizing the money used in the drug transaction, defendant acted in the discharge of his official duties or otherwise in the performance of his official functions as agent of the Drug Enforcement Administration, U.S. Department of Justice.”[9]

and interposes a counterclaim for P100,000.00 to answer for attorney's fees and the expenses of litigation.

On 13 June 1990, private respondent filed with the trial court the Defendant's Pre-Trial Brief,[10] the pertinent portions of which read:

x x x

"DEFENSES

1. Plaintiff's complaint is false and malicious;

2. In having a quantity of heroin and the money used in the drug transaction between him and plaintiff seized from plaintiff by P. C. NARCOM, plaintiff (sic) was acting in the discharge of his official functions as special agent of the Drug Enforcement Administration, U.S. Department of Justice and was then a member of the U.S. diplomatic mission in the Philippines.

DEFENDANT’S EVIDENCE

Defendant will present:

1. His testimony by deposition upon written interrogatories because defendant lives and works outside the Philippines and is not a resident of the Philippines.

2. Documentary evidence, consisting of DEA records on his investigation and surveillance of plaintiff and on his position and duties as DEA special agent in May 1986 in Manila; these will be identified by defendant and possibly by another DEA official.”[11]

On 14 June 1990, private respondent filed a Motion to Dismiss[12] the case on the ground that as per the copy of Diplomatic Note No. 414 issued by the Embassy of the United States of America,[13] dated 29 May 1990 and certified to be a true and faithful copy of the original by one Donald K. Woodward, Vice-Consul of the United States of America on 11 June 1990,[14] the Embassy advised the Department of Foreign Affairs of the Republic of the Philippines that:

"x x x Arthur W. Scalzo, was a member of the diplomatic staff of the United States diplomatic mission from his arrival in the Philippines on October 14, 1985 until his departure on August 10, 1988. x x x

x x x in May 1986, with the cooperation of Philippine law enforcement officials and in the exercise of his functions as a member of the mission, Mr. Scalzo investigated Mr. Khosrow Minucher, the plaintiff in the aforementioned case for allegedly trafficking in a prohibited drug. It is this investigation which has given rise to the plaintiff's complaint. The Embassy takes note of the provisions of Article 39(2) of the Vienna Convention on Diplomatic Relations, which provides that Mr. Scalzo retains immunity from civil suit for acts performed in the exercise of his functions, as is the case here, even though he has departed (sic) the country."

Petitioner opposed the motion.

On 25 June 1990, the trial court issued an order denying the motion for being "devoid of merit.”[15]

Private respondent then filed with the public respondent Court of Appeals a petition for certiorari, docketed therein as C.A.-G.R. SP No. 22505, to nullify the aforesaid Order of 25 June 1990.

On 31 October 1990, public respondent promulgated a Decision[16] ordering the dismissal of Civil Case No.

88-45691 due to the trial court's lack of jurisdiction over the person of the defendant because the latter possessed diplomatic immunity.

Petitioner's motion to reconsider the decision was denied in the public respondent's Resolution of 8 March 1991 because:

"When therefore Mr. Scalzo testified in the Criminal Case against Khosrow Minucher it was in connection with his official functions as an agent of the Drug Enforcement Administration of the United States and member (sic) of the American Mission charged with cooperating with the Philippine law enforcement agency. He therefore, enjoys immunity from criminal and civil jurisdiction of the receiving State under Article 31 of the Vienna Convention on Diplomatic Relations." [17]

Hence, this petition for review under Rule 45 of the Rules of Court. Petitioner declares that the public respondent erred:

"I. x x x IN NOT DISMISSING THE PETITION FOR CERTIORARI FILED BY SCALZO.

II. x x x IN RULING THAT PRIVATE RESPONDENT SCALZO IS A DIPLOMAT IMMUNE FROM CIVIL SUIT CONFORMABLY WITH THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS.

III. x x x IN NOT FINDING THAT SCALZO'S PARTICIPATION IN THE BUY-BUST OPERATION IS OUTSIDE OF HIS OFFICIAL FUNCTIONS, HENCE, THAT HE IS NOT IMMUNE FROM SUIT UNDER THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS." [18]

After private respondent filed his Comment to the petition and the petitioner submitted his Reply thereto, this Court gave due course to the same and required the parties to submit their respective Memoranda, which they subsequently did.

We find merit in the petition.

While the trial court correctly denied the motion to dismiss, the public respondent gravely abused its discretion in dismissing Civil Case No. 88-45691 on the basis of an erroneous assumption that simply because of the Diplomatic Note, the private respondent is clothed with diplomatic immunity, thereby divesting the trial court of jurisdiction over his person. It may at once be stated that even if the private respondent enjoys diplomatic immunity, a dismissal of the case cannot be ordered on the ground of lack of jurisdiction over his person, but rather for lack of a cause of action because even if he committed the imputed act and could have been otherwise made liable therefor, his immunity would bar any suit against him in connection therewith and would prevent recovery of damages arising therefrom. Jurisdiction over the person of the defendant is acquired either by his voluntary appearance or by the service of summons upon him. While in the instant case, private respondent's counsel filed, on 26 October 1988, a motion to quash summons because being outside the Philippines and being a non--resident alien, he is beyond the processes of the court, which was properly denied by the trial court, he had in effect already waived any defect in the service of the summons by earlier asking, on two (2) occasions, for an extension of time to file an answer, and by ultimately filing an Answer with Counterclaim. There is no question that the trial court acquired jurisdiction over the person of the private respondent.

And now to the core issue -- the alleged diplomatic immunity of the private respondent. Setting aside for the moment the issue of authenticity raised by the petitioner and the doubts that surround such a claim, in view of the fact that it took private respondent one (1) year, eight (8) months and seventeen (17) days from the time his counsel filed on 12 September 1988 a Special Appearance and Motion asking for a first extension of time to file the Answer because the Departments of State and Justice of the United States of America were studying the case for the purpose of determining his defenses, before he could secure the Diplomatic Note from the U.S. Embassy

in Manila, and even granting for the sake of argument that such note is authentic, the complaint for damages filed by the petitioner still cannot be peremptorily dismissed. Said complaint contains sufficient allegations which indicate that the private respondent committed the imputed acts in his personal capacity and outside the scope of his official duties and functions. As described in the complaint, he committed criminal acts for which he is also civilly liable. In the Special Appearance to Quash Summons earlier alluded to, on the other hand, private respondent maintains that the claim for damages arose "from an alleged tort." Whether such claim arises from criminal acts or from tort, there can be no question that private respondent was sued in his personal capacity for acts committed outside his official functions and duties. In the decision acquitting the petitioner in the criminal case involving the violation of the Dangerous Drugs Act, copy of which is attached to his complaint for damages and which must be deemed as an integral part thereof, the trial court gave full credit to petitioner's theory that he was a victim of a frame-up instigated by the private respondent. Thus, there is a prima facie showing in the complaint that indeed private respondent could be held personally liable for the acts committed beyond his official functions or duties.

In *Shauf vs. Court of Appeals*,^[19] after citing pertinent authorities,^[20] this Court ruled:

"The aforecited authorities are clear on the matter. They state that the doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. It is a well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction (*Dumlao vs. Court of Appeals*, et al., 114 SCRA 247 [1982])."

Even Article 31 of the Vienna Convention on Diplomatic Relations admits of exceptions. It reads:

"1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction except in the case of:

x x x

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions. (Emphasis supplied).

There is of course the claim of private respondent that the acts imputed to him were done in his official capacity. Nothing supports this self-serving claim other than the so-called Diplomatic Note. In short, insofar as the records are concerned, private respondent did not come forward with evidence to prove that indeed, he had acted in his official capacity. It does not appear that an actual hearing on the motion to dismiss was conducted and that private respondent offered evidence in support thereof. Thus, it is apropos to quote what this Court stated in *United States of America vs. Guinto*:^[21]

"But even as we are certain that the individual petitioners in G.R. No. 80018 were acting in the discharge of their official functions, we hesitate to make the same conclusion in G.R. No. 80258. The contradictory factual allegations in this case deserve in our view a closer study of what actually happened to the plaintiffs. The record is too meager to indicate if the defendants were really discharging their official duties or had actually exceeded their authority when the incident in question occurred. Lacking this information, this Court cannot directly decide this case. The needed inquiry must first be made by the lower court so it may assess and resolve the conflicting claims of the parties on the basis of the evidence that has yet to be presented at the trial. Only after it shall have determined in what capacity the petitioners were acting at the time of the incident in question will this Court determine, if still necessary, if the doctrine of state immunity is applicable."

It may be mentioned in this regard that private respondent himself, in his Pre-trial Brief filed on 13 June 1990, unequivocally states that he would present documentary evidence consisting of DEA records on his investigation and surveillance of plaintiff and on his position and duties as DEA special agent in Manila. Having thus reserved his right to present evidence in support of his position, which is the basis for the alleged diplomatic immunity, the barren self-serving claim in the belated motion to dismiss cannot be relied upon for a reasonable, intelligent and fair resolution of the issue of diplomatic immunity.

The public respondent then should have sustained the trial court's denial of the motion to dismiss. Verily, such should have been the most proper and appropriate recourse. It should not have been overwhelmed by the self-serving Diplomatic Note whose belated issuance is even suspect and whose authenticity has not yet been proved. The undue haste with which respondent Court yielded to the private respondent's claim is arbitrary.

WHEREFORE, the challenged decision of public respondent of 31 October 1990 in C.A.-G.R. SP No. 22505 is SET ASIDE and the Order of 25 June 1990 of Branch 19 of the Regional Trial Court of Manila in Civil Case No. 88-45691 denying private respondent's Motion to Dismiss is hereby REINSTATED.

Costs against private respondent.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

[1] Rollo, 144-149.

[2] Rollo, 45-46.

[3] Rollo, 48-49.

[4] Id., 51-57.

[5] Id., 58-60.

[6] Id., 61-65.

[7] Id., 66.

[8] Rollo, 150-154.

[9] Id., 152.

[10] Id., 155-158.

[11] Rollo, 157-158.

[12] Id., 159-163.

[13] Annex "F" of Memorandum for Petitioner; Id., 164-165.

[14] Id., 166.

[15] Rollo, 167.

[16] Id., 72-75. Per Associate Justice Fernando A. Santiago, concurred in by Associate Justices Vicente V. Mendoza and Justo P. Torres, Jr.

[17] Id., 76.

[18] Rollo, 10.

[19] 191 SCRA 713, 728 [1990].

[20] Director of the Bureau of Telecommunications vs. Aligaen, 33 SCRA 368 [1970] and the cases cited therein; Baer vs. Tizon, 57 SCRA 1 [1974]; Animos vs. Phil. Veterans Affairs Office, 174 SCRA 214 [1989].

[21] 182 SCRA 644, 660 [1990].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.