

## FIRST DIVISION

[ G.R. No. 210088, October 01, 2018 ]

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### D E C I S I O N

**TIJAM, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>[2]</sup> dated May 31, 2013 and the Resolution<sup>[3]</sup> dated November 11, 2013 of the Court of Appeals (CA) in CA G.R. CV No. 91428.

## Factual Antecedents

This case is an offshoot of the "Manila Pen Standoff". We recount that on November 29, 2007, now Senator Antonio Trillanes IV (Trillanes), Brigadier General Danilo Lim, and other members of the Magdalo group, walked out of the Regional Trial Court (RTC) of Makati City before the sala of Presiding Judge Oscar Pimentel (Judge Pimentel), during the hearing of their *coup d'etat* case, known as the "Oakwood Mutiny" staged in July 2003. The group proceeded to the nearby Manila Peninsula Hotel (Manila Pen), took over the hotel, and held a press conference at the lobby, calling for the ouster of then President Gloria-Macapagal Arroyo (President Arroyo).<sup>[4]</sup>

Members of the press, including some of the petitioners herein, proceeded to Manila Pen to cover news on the situation. Thereat, after issuing a statement at the lobby, demanding for President Arroyo's ouster, the group moved to a function room. Members of the press then followed them to continue with their coverage.<sup>[5]</sup>

Acting upon the situation, police authorities led by NCRPO Chief Geary Barias, proceeded to the Manila Pen to serve the Warrant of Arrest for Direct Contempt issued by Judge Pimentel against Trillanes' group. However, they refused to receive the warrant, hence, the officers were constrained to shove the same under the front door. The police officers then gave Trillanes' group until 3 o'clock that afternoon to vacate the premises. Despite these orders, however, petitioners Ellen Tordesillas, Charmaine Deogracias, Ashzel Hachero, and James Konstantin Galvez, opted to stay inside the function room with Trillanes' group.<sup>[6]</sup>

When the 3 o'clock deadline lapsed, the police authorities hurled tear gas canisters inside the hotel lobby and fired warning shots before breaking into the hotel to arrest Trillanes and his group. The members of the press who were inside the function room were also taken by the police officers and were brought to Camp Bagong Diwa with Trillanes' group. After processing, the said members of the press were cleared and released before midnight of the same day.<sup>[7]</sup>

In a subsequent meeting with the media at the Manila Pen, then Department of Interior and Local Government (DILG) Secretary Ronaldo Puno stated that "[j]ournalists who ignore police orders to leave a crime scene will be arrested and charged with obstruction of justice and willful disobedience of authority."<sup>[8]</sup>

Likewise, then Armed Forces of the Philippines (AFP) Chief of Staff Major General Hermogenes Esperon made a statement that the military is one with the Philippine National Police (PNP) in investigating the journalists who disobeyed the lawful orders and/or hindered the enforcement thereof.<sup>[9]</sup>

Then Department of National Defense (DND) Secretary Gilbert Teodoro (Secretary Teodoro) also defended the police authorities' actions in arresting the members of the press who ignored the above-cited orders.<sup>[10]</sup>

Then Department of Justice (DOJ) Secretary Raul Gonzales (Secretary Gonzales) issued an Advisory<sup>[11]</sup> addressed to all Chief Executive Officers (CEO) of media networks, media companies, and press groups, stating as follows:

Please be reminded that your respective companies, networks or organizations may incur criminal liabilities under the law, if anyone of

your field reporters, news gatherers, photographers, cameramen and other media practitioners will disobey lawful orders from duly authorized government officers and personnel during emergencies which may lead to collateral damage to properties and civilian casualties in case of authorized police or military operations.

Former PNP Director General Avelino Razon announced his support to Secretary Gonzales' advisory and further said that media could be charged with obstruction of justice for disobeying the police warnings.<sup>[12]</sup>

These circumstances prompted petitioners to file a Complaint<sup>[13]</sup> for Damages and Injunction with Prayer for Preliminary Mandatory Injunction and/or Temporary Restraining Order (TRO) against respondents on January 28, 2008. Petitioners also filed an Urgent Motion for the Issuance of a 72-hour TRO, which was granted on the same day.<sup>[14]</sup>

In the main, petitioners averred in the said Complaint that the warrantless and oppressive arrest of journalists who were peacefully exercising their constitutional rights, clearly violates their right to press and project a "chilling effect" on such constitutionally-protected freedom. Petitioners further averred that the acts complained of constitute prior restraint, as such acts prevented journalists from carrying out the duties of their profession to report on a matter of public interest.<sup>[15]</sup>

After hearings and submission of respective memoranda on the application for TRO, the RTC of Makati, Branch 56, denied the application for TRO in its Order dated February 8, 2008.<sup>[16]</sup>

Secretary Teodoro and the Office of the Solicitor General (OSG) filed separate Motions to Dismiss on February 12, 2008 and February 28, 2008, respectively. On March 6, 2008, petitioners filed an Opposition to the said Motions to Dismiss.<sup>[17]</sup>

Secretary Teodoro and the OSG also filed their respective Oppositions/Memoranda to the application for injunction and to the admission of the expert testimony of Dean Raul C. Pangalangan (Dean Pangalangan).<sup>[18]</sup>

On June 2, 2008, the injunction was likewise denied. Petitioners filed a motion for reconsideration thereof but the same was not resolved by the trial court. Instead, the RTC issued an Order dated June 20, 2008, dismissing petitioners' Complaint on the ground that the petitioners have no cause of action against respondents, thus:

**WHEREFORE,** for reasons afore-stated, the complaint is hereby **DISMISSED.**

**SO ORDERED.**<sup>[19]</sup>

### **The CA Ruling**

On appeal, the CA found no reversible error in dismissing petitioners' Complaint and in denying their prayer for TRO and/or injunction. In its May 31, 2013 assailed Decision, the CA guaranteed its recognition of the principle that the right to freedom of the press, along with the freedom of speech and of expression, and the right to peaceably assemble, is a right that enjoys primacy in the realm of constitutional

protection as these rights constitute the very basis of a functional democratic polity, without which all the other rights would be meaningless and unprotected.<sup>[20]</sup>

The CA, however, also exhaustively discussed the equally settled principle that these rights are not absolute. It explained that the very nature of every well-ordered civil society necessitates that the exercise of such rights may be so regulated so as not to be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society.<sup>[21]</sup> In this regard, the CA discussed the concept of the State's police power.

The appellate court, thus, came into the conclusion that petitioners have no cause of action against the respondents as the former failed to show that their rights were violated which constitute an actionable wrong.<sup>[22]</sup>

Consequently, the CA also held that the petitioners are not entitled to the injunctive relief prayed for, for failure to prove their claim that the acts of the respondents are violative of their rights as members of the press. The CA also found no serious damage or injury sought to be prevented.<sup>[23]</sup>

As to the admissibility of the testimony of expert witness Dean Pangalangan, the CA sustained the RTC's ruling to exclude the same as it "runs counter to the power of the Court to interpret and apply the laws to a given set of facts as it undisputedly deal with the constitutionality or legality of the DOJ Advisory, public pronouncements made by other high ranking government officials and the arrest of some of the [petitioners] xxx." Besides, according to the RTC, as affirmed by the CA, there is no factual issue before the court which requires the presentation of an expert witness.<sup>[24]</sup>

In all, the CA disposed, thus:

**WHEREFORE**, premises considered, the instant appeal is **DISMISSED**.  
The appealed Orders are hereby **AFFIRMED**.

**SO ORDERED.**<sup>[25]</sup>

In its November 11, 2013 assailed Resolution, the CA denied petitioners' motion for reconsideration:

**ACCORDINGLY**, [petitioners'] *Motion for Reconsideration* is hereby **DENIED**.

**SO ORDERED.**<sup>[26]</sup>

Hence, this petition.

### **Issues**

(1) Whether or not the CA committed reversible error in finding that petitioners have no cause of action against respondents:

(a) Whether or not the Advisory issued by the respondents is not content-neutral and thus constitute prior restraint, censorship, and are content-restrictive, which resulted to a "chilling effect" in violation of the freedom of the press;

(b) Whether or not the journalist's arrest was plain censorship.

(2) Whether or not Dean Pangalangan's testimony should have been admitted.

(3) Whether or not the denial of the TRO and/or injunctive writ was proper.

### **Our Ruling**

Once again, this Court is faced with the predicament of balancing the spectrum with a State action on one hand and the right of free speech and of the press on the other, both constitutionally mandated and/or guaranteed. Specifically, the basic freedom of the press is invoked herein to condemn the taking of some media practitioners to Camp Bagong Diwa, together with Trillanes' group, who disobeyed the order to vacate the premises upon service of the warrant of arrest to the latter, as well as the subsequent public pronouncement and/or advisory, reminding media practitioners that disobedience to lawful orders of duly authorized government officers and personnel during emergencies which may lead to collateral damage to properties and civilian casualties in case of authorized police or military operations may result to criminal liability, as being in the nature of a prior restraint, producing a chilling effect on the exercise of press freedom, violating thus such constitutionally-protected right.

At the outset, it must be stated that this Court unwavingly recognizes that one of the cherished liberties in democracy, such as ours, is the freedom of speech and of the press.<sup>[27]</sup> In fact, no less than the 1987 Constitution, Article III, Section 4<sup>[28]</sup> thereof, mandates full protection to freedom of speech, of expression, and of the press. The importance of the right to free speech and press can be gleaned from the language of the said specific constitutional provision, which makes it seem like the said right is not susceptible of any limitation.<sup>[29]</sup> In the case of *Prof. Randolph David v. Gloria Macapagal-Arroyo*,<sup>[30]</sup> the Court even opined that "[t]he best gauge of a free and democratic society rests in the degree of freedom enjoyed by its media." In the landmark case of *Chavez v. Gonzales*,<sup>[31]</sup> We highlighted the importance of press freedom as follows:

Much has been written on the philosophical basis of press freedom as part of the larger right of free discussion and expression. Its practical importance, though, is more easily grasped. It is the chief source of information on current affairs. It is the most pervasive and perhaps most powerful vehicle of opinion on public questions. It is the instrument by which citizens keep their government informed of their needs, their aspirations and their grievances. It is the sharpest weapon in the fight to keep government responsible and efficient. Without a vigilant press, the mistakes of every administration would go uncorrected and its abuses unexposed. As Justice Malcolm wrote in *United States v. Bustos*:

The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete 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 clear conscience.