

## SECOND DIVISION

[ G.R. No. 208146, June 08, 2016 ]

### **VIRGINIA DIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND TIMOTHY DESMOND, RESPONDENTS.**

#### **DECISION**

##### **LEONEN, J.:**

When a motion to quash an information is based on a defect that may be cured by amendment, courts must provide the prosecution with the opportunity to amend the information.

This resolves a Petition for Review on Certiorari<sup>[1]</sup> assailing the Court of Appeals Decision<sup>[2]</sup> dated January 8, 2013 and Resolution<sup>[3]</sup> dated July 10, 2013. The Court of Appeals reversed and set aside the Regional Trial Court Order that quashed the Informations charging petitioner Virginia Dio (Dio) with libel because these Informations failed to allege publication.<sup>[4]</sup>

Private respondent Timothy Desmond (Desmond) is the Chair and Chief Executive Officer of Subic Bay Marine Exploratorium, of which Dio is Treasurer and Member of the Board of Directors.<sup>[5]</sup>

On December 9, 2002, Desmond filed a complaint against Dio for libel.<sup>[6]</sup> Two (2) separate Informations, both dated February 26, 2003, were filed and docketed as Criminal Case Nos. 9108 and 9109.<sup>[7]</sup> The Information in Criminal Case No. 9108 reads:

That on or about July 6, 2002 in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with malicious intent to besmirch the honor, integrity and reputation of Timothy Desmond, Chairman and Chief Executive Office of Subic Bay Marine Exploratorium, did then and there willfully, unlawfully, and feloniously send electronic messages to the offended party and to other persons namely: Atty. Winston Ginez, John Corcoran, and Terry Nichoson which read as follows:

'NOW THAT WE ARE SET TO BUILD THE HOTEL SO THAT YOU COULD SURVIVED, (sic) YOU SHOULD STOP YOUR NONSENSE THREAT BECAUSE YOU COULD NOT EVEN FEED YOUR OWN SELF UNLESS WE PAY YOUR EXHORBITANT (sic) SALARY, HOUSE YOU ADN (sic) SUPPORT ALL YOUR PERSONAL NEEDS. YOU SHOULD BE ASHAMED IN DOING THIS. AS FAR AS WE ARE CONCERNED, YOU ARE NOTHING EXCEPT A PERSON WHO IS TRYING TO SURVIVED (sic) AT THE PRETEXT OF ENVIRONMENTAL AND ANIMAL PROTECTOR [sic]. YOU ARE PADI (sic) TO THE LAST CENTS ON

ALL YOUR WORK IN THE WORK (sic). AT THE SAME TIME, YOU BLOATED THE PRICE OF EACH ANIMAL YOU BROUGHT TO THE PHILIPPINES from US\$500,000.00 to US\$750,000.00 each so that you could owned (sic) more shares that you should. Please look into this deeply.

IF YOU INSISTS (sic) TO BE CALLED AN ENVIRONMENTAL AND ANIMAL PROTECTOR IN OUR COUNTRY, THEN YOU AND YOUR WIFE SHOULD STOP BLEEDING THE COMPANY WITH YOUR MONTHLY PAYROLL OF ALMOST P1 MILLION A MONTH.'

The above-quoted electronic message being defamatory or constituting an act causing or tending to cause dishonor, discredit or contempt against the person of the said Timothy Desmond, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.<sup>[8]</sup>

The Information in Criminal Case No. 9109 reads:

That on or about July 13, 2002 in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with malicious intent to besmirch the honor, integrity and reputation of Timothy Desmond, Chairman and Chief Executive Office of Subic Bay Marine Exploratorium, did then and there willfully, unlawfully, and feloniously send electronic messages to the [sic] Atty. Winston Ginez and Fatima Paglicawan, to the offended party, Timothy Desmond and to other persons namely: Hon. Felicito Payumo, SBMA Chariman [sic], Terry Nichoson, John Corcoran, and Gail Laule which read as follows:

'Dear Winston and Fatima:

UNDER THE LEADERSHIP OF TIM DESMOND AS CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF SBME, AS OF THIS DATE THE COMPANY HAD INCURRED A LOSS OF MORE THAN ONE HUNDRED MILLION. A BALANCE SHEET SUBMITTED TODAY BY THEIR ACCOUNTANT JULIET REFLECT AND (sic) ASSETS OF MORE THAN THREE HUNDRED MILLION PESOS, 50% OF WHICH IS OVERVALUED AND NON-EXISTENT. TIM DESMOND AND FAMILY HAD ACCUMULATED A (sic) SHARES OF MORE THAN 70% OF THE RECORDED PAID UP CAPITAL BY OVERVALUING OF THE ASSETS CONTRIBUTION, PAYMENT TO THEIR OWN COMPANY IN THE USA, ETC. AT THE SAME TIME, TIM DESMOND AND FAMILY BLEED THE COMPANY FROM DATE OF INCORPORATION TO PRESENT FOR AN AVERAGE OF ONE MILLION PER MONTH FOR THEIR PERSONAL GAIN, LIKE SALARY, CAR, ET, [sic] ETC.'

The above-quoted electronic message being defamatory or constituting an act causing or tending to cause dishonor, discredit or contempt against the person of the said Timothy Desmond, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.<sup>[9]</sup>

On April 22, 2003, Dio filed a Petition to suspend the criminal proceedings,<sup>[10]</sup> but it was denied in the Order dated February 6, 2004.<sup>[11]</sup>

Dio moved for reconsideration of the February 6, 2004 Order.<sup>[12]</sup> She also moved to quash the Informations, arguing that the "facts charged do not constitute an offense."<sup>[13]</sup> In its Order<sup>[14]</sup> dated July 13, 2004, the trial court denied both Motions. The dispositive portion of the Order reads:

Premises considered, the Motion For Reconsideration of the Order dated February 6, 2004 and the Motion To Quash, both filed for accused, as well as the Motion For Issuance of a Hold Departure Order filed by the Prosecution, are hereby DENIED.

Arraignment will proceed as previously set on July 20, 2005 at 9:00 a.m.

SO ORDERED.<sup>[15]</sup>

Dio moved for partial reconsideration of the July 13, 2004 Order, but the Motion was denied in the trial court's Order dated September 13, 2005.<sup>[16]</sup>

On October 11, 2005, Dio filed a Motion for leave of court to file a second motion for reconsideration.<sup>[17]</sup> She also filed an Omnibus Motion to quash the Informations for failure to allege publication and lack of jurisdiction, and for second reconsideration with leave of court.<sup>[18]</sup>

The trial court's Order dated February 7, 2006 denied both Motions and scheduled Dio's arraignment on March 9, 2006.<sup>[19]</sup> Dio moved for partial reconsideration.<sup>[20]</sup>

The trial court granted Dio's Motion for Partial Reconsideration in its February 12, 2009 Order,<sup>[21]</sup> the dispositive portion of which reads:

WHEREFORE, the Motion For Partial Reconsideration filed by the accused in Criminal Cases (sic) Nos. 9108 and 9109, on the ground that the Informations in the said cases fail (sic) to allege publication, is GRANTED and, accordingly, the Informations filed against the accused are thereby QUASHED and DISMISSED.

No finding as to costs.

SO ORDERED.<sup>[22]</sup>

After filing a Notice of Appeal on March 5, 2009,<sup>[23]</sup> Desmond raised before the Court of Appeals the following issues:

## I

WHETHER OR NOT THE LOWER COURT ERRED IN UPHOLDING THE ACCUSED'S ARGUMENT THAT THE PRESENT CHARGES SHOULD BE QUASHED FOR FAILURE OF THE INFORMATIONS TO ALLEGE PUBLICATION.

WHETHER OR NOT THE LOWER COURT ERRED IN DISMISSING THE CASE AND QUASHING THE INFORMATIONS WITHOUT GIVING THE PROSECUTOR THE OPPORTUNITY TO AMEND THE INFORMATIONS.<sup>[24]</sup>

In its January 8, 2013 Decision, the Court of Appeals sustained that the Informations did not substantially constitute the offense charged.<sup>[25]</sup> It found that the Informations did not contain any allegation that the emails allegedly sent by Dio to Desmond had been accessed.<sup>[26]</sup> However, it found that the trial court erred in quashing the Informations without giving the prosecution a chance to amend them pursuant to Rule 117, Section 4 of the Rules of Court:

Although we agree with the trial court that the facts alleged in the Informations do not substantially constitute the offense charged, the most prudent thing to do for the trial court is to give the prosecution the opportunity to amend it and make the necessary corrections. Indeed, an Information may be defective because the facts charged do not constitute an offense, however, the dismissal of the case will not necessarily follow. The Rules specifically require that the prosecution should be given a chance to correct the defect; the court can order the dismissal only upon the prosecution's failure to do so. The trial court's failure to provide the prosecution with this opportunity constitutes an arbitrary exercise of power.<sup>[27]</sup>

The dispositive portion reads:

WHEREFORE, premises considered, the appeal is GRANTED. The order of the Regional Trial Court of Balanga City, Branch 3 dated February 12, 2009 in Criminal Case Nos. 9108 and 9109 is REVERSED AND SET ASIDE. The case is remanded to the trial court and the Public Prosecutor of Balanga City is hereby DIRECTED to amend the Informations.

SO ORDERED.<sup>[28]</sup>

Dio moved for reconsideration,<sup>[29]</sup> but the Court of Appeals denied the Motion in its July 10, 2013 Resolution.<sup>[30]</sup>

Hence, this Petition was filed.

Desmond and the Office of the Solicitor General filed their Comments,<sup>[31]</sup> to which Dio filed her Reply.<sup>[32]</sup> On April 2, 2014, this Court gave due course to the Petition and required the parties to submit their respective memoranda.<sup>[33]</sup>

The Office of the Solicitor General filed on June 11, 2014 a Manifestation and Motion<sup>[34]</sup> adopting its Comment. Desmond and Dio filed their memoranda on June 19, 2014<sup>[35]</sup> and July 10, 2014,<sup>[36]</sup> respectively.

Dio stresses that "venue is jurisdictional in criminal cases."<sup>[37]</sup> Considering that libel is limited as to the venue of the case, failure to allege "where the libelous article

was printed and first published"[38] or "where the offended party actually resided at the time of the commission of the offense"[39] is a jurisdictional defect. She argues that jurisdictional defects in an Information are not curable by amendment, even before arraignment. To support this position, she cites *Agustin v. Pamintuan*: [40]

We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed. [41] (Citations omitted)

Dio also cites *Leviste v. Hon. Alameda*, [42] where this Court has stated that not all defects in an Information are curable by amendment prior to arraignment:

It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. An information which is void *ab initio* cannot be amended to obviate a ground for quashal. An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible. [43] (Citations omitted)

Dio argues that the Informations were void as the prosecutor of Morong, Bataan had no authority to conduct the preliminary investigation of the offenses charged. [44] The complaint filed before the prosecutor did not allege that the emails were printed and first published in Morong Bataan, or that Desmond resided in Morong, Bataan at the time of the offense. [45] In the absence of these allegations, the prosecutor did not have the authority to conduct the preliminary investigation or to file the information. [46]

Dio further argues that publication, one of the elements of libel, was not present in the case. She asserts that emailing does not constitute publication under Article 355 of the Revised Penal Code. As there was no allegation in the Informations that the emails were received, accessed, and read by third persons other than Desmond, there could be no publication. [47] Further, emails are not covered under Article 355 of the Revised Penal Code. Thus, at the time the allegedly libelous emails were sent, there was no law punishing this act. [48]

Finally, Dio argues that she sent the emails as private communication to the officers of the corporation, who were in the position to act on her grievances. [49] The emails were sent in good faith, with justifiable ends, and in the performance of a legal duty. [50]

The primordial issue for resolution is whether an information's failure to establish venue is a defect that can be cured by amendment before arraignment.

The Petition is denied.

## I

If a motion to quash is based on a defect in the information that can be cured by