

SECOND DIVISION

[G.R. No. 183623, June 25, 2012]

**LETICIA B. AGBAYANI, PETITIONER, VS. COURT OF APPEALS,
DEPARTMENT OF JUSTICE AND LOIDA MARCELINA J. GENABE,
RESPONDENTS.**

D E C I S I O N

REYES, J.:

On petition for review under Rule 45 of the 1997 Rules of Court is the Decision^[1] dated March 27, 2008 of the Court of Appeals (CA) dismissing the petition for *certiorari* and the Resolution^[2] dated July 3, 2008 denying the motion for reconsideration thereof in CA-G.R. SP No. 99626. Petitioner Leticia B. Agbayani (Agbayani) assails the resolution of the Department of Justice (DOJ) which directed the withdrawal of her complaint for grave oral defamation filed against respondent Loida Marcelina J. Genabe (Genabe).

Antecedent Facts

Agbayani and Genabe were both employees of the Regional Trial Court (RTC), Branch 275 of Las Piñas City, working as Court Stenographer and Legal Researcher II, respectively. On December 29, 2006, Agbayani filed a criminal complaint for grave oral defamation against Genabe before the Office of the City Prosecutor of Las Piñas City, docketed as I.S. No. 07-0013, for allegedly uttering against her, in the presence of their fellow court employees and while she was going about her usual duties at work, the following statements, to wit:

"ANG GALING MO LETY, SINABI MO NA TINAPOS MO YUNG MARVILLA CASE, ANG GALING MO. FEELING LAWYER KA KASI, BAKIT DI KA MAGDUTY NA LANG, STENOGRAPHER KA MAGSTENO KA NA LANG, ANG GALING MO, FEELING LAWYER KA TALAGA. NAGBEBENTA KA NG KASO, TIRADOR KA NG JUDGE. SIGE HIGH BLOOD DIN KA, MAMATAY KA SANA SA HIGH BLOOD MO."^[3]

In a Resolution^[4] rendered on February 12, 2007, the Office of the City Prosecutor of Las Piñas City^[5] found probable cause for the filing of the Information for grave oral defamation against Genabe.

However, upon a petition for review filed by Genabe, the DOJ Undersecretary Ernesto L. Pineda (Pineda) found that:

After careful evaluation and consideration of the evidence on record, we find merit in the instant petition.

Contrary to the findings in the assailed resolution, we find that the subject utterances of respondent constitute only slight oral defamation.

As alleged by the [petitioner] in paragraphs 2, 3 and 4 of her complaint-affidavit, respondent uttered the remarks subject matter of the instant case in the heat of anger. This was also the tenor of the sworn statements of the witnesses for complainant. The Supreme Court, in the case of Cruz vs. Court of Appeals, G.R. Nos. L-56224-26, November 25, 1982, x x x held that although abusive remarks may ordinarily be considered as serious defamation, under the environmental circumstances of the case, there having been provocation on complainant's part, and the utterances complained of having been made in the *heat of unrestrained anger and obfuscation*, such utterances constitute only the crime of slight oral defamation.

Notwithstanding the foregoing, we believe that the instant case should nonetheless be dismissed for non-compliance with the provisions of Book III, Title I, Chapter 7 (Katarungang Pambarangay), of Republic Act No. 7160 (The Local Government Code of 1991). As shown by the records, the parties herein are residents of Las Piñas City. x x x

The complaint-affidavit, however, failed to show that the instant case was previously referred to the barangay for conciliation in compliance with Sections 408 and 409, paragraph (d), of the Local Government Code, which provides:

Section 408. Subject Matter for Amicable Settlement; Exception Thereto.
– The lupon of each barangay shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except: xxx

Section 409. Venue. x x x (d) Those arising at the workplace where the contending parties are employed or xxx shall be brought in the barangay where such workplace or institution is located.

The records of the case likewise show that the instant case is not one of the exceptions enumerated under Section 408 of the Local Government Code. Hence, the dismissal of the instant petition is proper.

It is well-noted that the Supreme Court held that where the case is covered by P.D. 1508 (Katarungang Pambarangay Law), the compulsory process of arbitration required therein is a pre-condition for filing a complaint in court. Where the complaint (a) did not state that it is one of the excepted cases, or (b) it did not allege prior availing of said conciliation process, or (c) did not have a certification that no conciliation or settlement had been reached by the parties, the case should be dismissed x x x. While the foregoing doctrine is handed down in civil cases, it is submitted that the same should apply to criminal cases

covered by, but filed without complying with, the provisions of P.D. 1508
x x x.^[6]

Thus, in a Resolution^[7] dated May 17, 2007, the DOJ disposed, to wit:

WHEREFORE, premises considered, the assailed resolution is hereby **REVERSED** and **SET ASIDE**. Accordingly, the City Prosecutor of Las Piñas City is directed to move for the withdrawal of the information for grave oral defamation filed against respondent Loida Marcelina J. Genabe, and report the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.^[8]

The petitioner filed a motion for reconsideration, which was denied in a Resolution^[9] dated June 25, 2007.

Consequently, Agbayani filed a petition for *certiorari* with the CA alleging that the DOJ committed grave abuse of discretion in setting aside the Resolution dated February 12, 2007 of the City Prosecutor of Las Piñas City in I.S. Case No. 07-0013. She averred that the respondent's petition for review filed with the DOJ did not comply with Sections 5 and 6 of DOJ Circular No. 70, or the "2000 National Prosecution Service (NPS) Rules on Appeal," and maintained that her evidence supported a finding of probable cause for grave oral defamation against respondent Genabe.

On March 27, 2008, the CA dismissed the petition after finding no grave abuse of discretion on the part of the DOJ. Citing *Punzalan v. Dela Peña*,^[10] the CA stated that for grave abuse of discretion to exist, the complained act must constitute a capricious and whimsical exercise of judgment as it is equivalent to lack of jurisdiction, or when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law. It is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave.

On motion for reconsideration by the petitioner, the CA denied the same in its Resolution^[11] dated July 3, 2008. Hence, the instant petition.

Assignment of Errors

Maintaining her stance, Agbayani raised the following, to wit:

I. RESPONDENT COURT GRAVELY ERRED IN HOLDING THAT THE RESPONDENT DOJ DID NOT ABUSE ITS DISCRETION WHEN THE LATTER REVERSED AND SET ASIDE THE RESOLUTION OF THE CITY PROSECUTOR OF LAS PIÑAS CITY.

II. RESPONDENT COURT GRAVELY ERRED IN AFFIRMING RESPONDENT DOJ'S FINDING THAT WHAT PRIVATE RESPONDENT COMMITTED WAS ONLY SLIGHT ORAL DEFAMATION.

III. RESPONDENT COURT GRAVELY ERRED IN AFFIRMING RESPONDENT DOJ'S DISMISSAL OF THE COMPLAINT DUE TO NON-COMPLIANCE WITH THE PROVISIONS OF THE LOCAL GOVERNMENT CODE OF 1991.

IV. RESPONDENT COURT GRAVELY ERRED WHEN IT HELD THAT THE REQUIREMENTS UNDER DOJ CIRCULAR NO. 70 (2000 NPS Rule on Appeal) ARE NOT MANDATORY.^[12]

Ruling and Discussions

The petition is bereft of merit.

We shall first tackle Agbayani's arguments on the first two issues raised in the instant petition.

1. Petitioner Agbayani alleged that Undersecretary Pineda unfairly heeded only to the arguments interposed by respondent Genabe in her comment; and the CA, in turn, took his findings and reasoning as gospel truth. Agbayani's comment was completely disregarded and suppressed in the records of the DOJ. Agbayani discovered this when she went to the DOJ to examine the records, as soon as she received a copy of the DOJ Resolution of her motion for reconsideration.

2. Further, petitioner Agbayani maintained that respondent Genabe's Petition for Review^[13] should have been dismissed outright, since it failed to state the name and address of the petitioner, nor did it show proof of service to her, pursuant to Sections 5 and 6 of DOJ Circular No. 70. Also, the petition was not accompanied with the required attachments, i.e. certified copies of the complaint, affidavits of witnesses, petitioner's reply to respondent's counter-affidavit, and documentary evidences of petitioner. Thus, a grave irregularity was committed by the DOJ in allowing the surreptitious insertion of these and many other documents in the records of the case, after the petition had been filed.

In particular, petitioner Agbayani alleged that when the petition was filed on March 22, 2007, only five (5) documents were attached thereto, namely: (a) the Resolution of the City Prosecutor; (b) the respondent's Counter-affidavit; (c) Letter of the staff dated January 2, 2005; (d) her Answer; and (e) the Information filed against respondent Genabe with the Office of the City Prosecutor of Las Piñas City. However, at the time the Resolution of the DOJ was issued, a total of forty-one (41) documents^[14] formed part of the records of the petition. Besides, respondent Genabe's Motion to Defer Arraignment (Document No. 40) and the court order relative to the granting of the same (Document No. 41) were both dated March 23, 2007, or a day after the petition was filed. Agbayani asserted that these thirty-six (36) documents were surreptitiously and illegally attached to the records of the case, an act constituting extrinsic fraud and grave misconduct.^[15] At the very least, the DOJ should have required respondent Genabe to formalize the "insertion"

of the said documents.

Petitioner Agbayani reiterated that her version of the incident was corroborated by several witnesses (officemates of Agbayani and Genabe), while that of Genabe was not. And since the crime committed by respondent Genabe consisted of her exact utterances, the DOJ erred in downgrading the same to slight oral defamation, completely disregarding the finding by the Investigating Prosecutor of probable cause for the greater offense of grave oral defamation. She denied that she gave provocation to respondent Genabe, insisting that the latter committed the offense with malice aforethought and not in the heat of anger.

We find no merit in the above arguments.

It is well to be reminded, first of all, that the rules of procedure should be viewed as mere instruments designed to facilitate the attainment of justice. They are not to be applied with severity and rigidity when such application would clearly defeat the very rationale for their conception and existence. Even the Rules of Court reflects this principle.^[16]

Anent the charge of non-compliance with the rules on appeal, Sections 5 and 6 of the aforesaid DOJ Circular provide:

SECTION 5. Contents of petition. - The petition shall contain or state: (a) the names and addresses of the parties; (b) the Investigation Slip number (I.S. No.) and criminal case number, if any, and title of the case, including the offense charged in the complaint; (c) the venue of the preliminary investigation; (d) the specific material dates showing that it was filed on time; (e) a clear and concise statement of the facts, the assignment of errors, and the reasons or arguments relied upon for the allowance of the appeal; and (f) proof of service of a copy of the petition to the adverse party and the Prosecution Office concerned.

The petition shall be accompanied by legible duplicate original or certified true copy of the resolution appealed from together with legible true copies of the complaint, affidavits/sworn statements and other evidence submitted by the parties during the preliminary investigation/reinvestigation.

If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition.

The investigating/reviewing/approving prosecutor shall not be impleaded as party respondent in the petition. The party taking the appeal shall be referred to in the petition as either "Complainant-Appellant" or "Respondent-Appellant."

SECTION 6. Effect of failure to comply with the requirements. - The failure of petitioner to comply WITH ANY of the foregoing requirements shall constitute sufficient ground for the dismissal of the petition.