

## FIRST DIVISION

[ G.R. No. 149261, December 15, 2010 ]

**AZUCENA B. CORPUZ, PETITIONER, VS. ROMAN G. DEL ROSARIO,  
RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

It is a rule too firmly established that the "determination of probable cause for the filing of an Information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice."<sup>[1]</sup> "judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that the full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation."<sup>[2]</sup>

Challenged in the present petition for review on *certiorari* under Rule 45 of the Rules of Court is the Decision<sup>[3]</sup> dated July 27, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 56434 denying petitioner's petition for *certiorari*.

The controversy has its root in an affidavit-complaint<sup>[4]</sup> filed with the City Prosecutor's Office of Makati City by Assistant Solicitor General Roman G. del Rosario accusing herein petitioner Assistant Solicitor General Azucena B. Corpuz for Libel. In said complaint, respondent claimed that petitioner's June 13, 1997 memorandum was maliciously issued without any good intention but to discredit and cause dishonor to his good name as a government employee. He insisted that the import of the memorandum affected his credibility and the performance of his official functions as Assistant Solicitor General among others.

After the preliminary investigation, Investigating Prosecutor Filipinas Z. Aguilar-Ata (Prosecutor Ata) issued on November 21, 1997, a Resolution making the following findings and recommendation:

We find the words "x x x, there is no such thing as 'palabra de honor as far as ASG del Rosario is concerned,' x x x contained in the memorandum dated June 13, 1997 issued by respondent, defamatory as it imputes a kind of defect on complainant's part which tends to discredit his integrity as an Assistant Solicitor General and the other functions he [holds]. Malice is thus presumed from the defamatory imputation. Moreover, the respondent's disposition of having addressed the Memorandum not only to the Solicitor General but to all Assistants [sic] Solicitors] General reveals the absence of good intention on her part in making the imputation. There was, therefore, undue publication of the libelous

Memorandum as in fact, the same was received and read by the officers concerned.

In line, the evidence has sufficiently established a probable cause to indict respondent with the crime of libel, and accordingly, [the] undersigned respectfully recommends that the corresponding information be filed in Court<sup>[5]</sup>

What transpired then were the following events and proceedings. On December 8, 1997, the City Prosecutor's Office of Makati City approved the Resolution of Prosecutor Ata. Accordingly, an Information for libel was filed against petitioner with the Regional Trial Court (RTC) of Makati City.

Petitioner's appeal from the prosecutor's resolution was not given due course by NCR Regional Prosecutor/Chief State Prosecutor Jovencito R. Zuño on March 10, 1998.<sup>[6]</sup> Her motion for reconsideration was likewise denied on September 8, 1998.<sup>[7]</sup> Petitioner appealed to the Department of Justice (DOJ) assailing the resolution of the City Prosecutor's Office of Makati City. On August 17, 1999, the DOJ Secretary considered the appeal as a second motion for reconsideration and resolved to deny the appeal with finality.<sup>[8]</sup>

Petitioner then elevated the matter via a petition for certiorari before the CA contending that the public prosecutors gravely abused their discretion in finding a prima facie case of libel against her and exceeded their jurisdiction when her appeal from the resolution of the City Prosecutor's Office of Makati City was not given due course.

### ***Ruling of the Court of Appeals***

On July 27, 2001, the CA issued its herein assailed Decision<sup>[9]</sup> denying the petition. It found that the petitioner failed to clearly show exceptional circumstances to justify her resort to the extraordinary remedy of the writ of *certiorari*. The appellate court likewise found petitioner's assertions that the memorandum is a privileged communication which was issued without malice are matters of defense which should be properly discussed during trial. The CA disposed the matter in this wise:

WHEREFORE, finding no grave abuse of discretion, amounting to lack or excess of jurisdiction on the part of public respondents, the Petition is DENIED.

SO ORDERED.<sup>[10]</sup>

The unsuccessful quest by petitioner to reverse the resolutions of the City Prosecutor's Office of Makati City, the Chief State Prosecutor, the DOJ Secretary and the CA did not hamper her struggle. Petitioner is now before us via the instant recourse ascribing to the CA the following assignment of errors:

1. (In) concluding that the findings of the Makati City Prosecutor in the preliminary investigation are essentially factual in nature, and that in assailing such findings petitioner is raising questions of fact;
2. (In) holding that petitioner's arguments that subject memorandum is a privileged communication and that there is absence of malice in the issuance thereof being matters of defense should be resolved by the trial court, and
3. (In) ruling that the extraordinary writ of certiorari is not available since other remedies are obtainable with the trial court.<sup>[11]</sup>

Per directive<sup>[12]</sup> of the Court, respondent filed his Comment<sup>[13]</sup> to the Petition on December 12, 2001. On January 30, 2002, the Court required petitioner to file her reply,<sup>[14]</sup> which she complied with on April 30, 2002.<sup>[15]</sup> Pursuant to our Resolution dated June 3, 2002<sup>[16]</sup> the parties submitted their respective memoranda.

Significantly, in her Reply,<sup>[17]</sup> petitioner made an absolute turnaround and manifested that she is not assailing in the instant petition the following findings of the Prosecutor: First, that malice is presumed from the defamatory imputation. Second, that the subject memorandum was addressed not only to the Solicitor General but also to all the Assistant Solicitors General who received and read them. Third, that the words "there is no such thing as 'palabra de honor' as far as ASG del Rosario is concerned" imputes a kind of defect on respondent tending to discredit his integrity as an Assistant Solicitor General and the other functions he holds.

Petitioner expressly concedes that the main issue in the present petition is whether the CA correctly ruled that no grave abuse of discretion was committed by the Assistant City Prosecutor in concluding that her findings have *prima facie* established the elements of libel despite their not being in accordance with law and jurisprudence on the matter.

Petitioner avers that there are no findings of facts to support the conclusion that the elements of libel exist. She also points out that the findings of the prosecutor are not sufficient to constitute probable cause.

### **Our Ruling**

The contentions of petitioner are devoid of merit.

We have examined the records of the case and have found no such error much less abuse of discretion committed by the prosecutor and the C A justifying a reversal of their resolutions since their unanimous findings of probable cause for libel against petitioner are based on law, jurisprudence and evidence on records.

"Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof."<sup>[18]</sup> A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has