

## FIRST DIVISION

[ G.R. NO. 156183, February 28, 2007 ]

**NICASIO I. ALCANTARA, PETITIONER, VS. VICENTE C. PONCE  
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**CORONA, J.:**

This is a petition for review on certiorari<sup>[1]</sup> from a decision<sup>[2]</sup> and resolution<sup>[3]</sup> of the Court of Appeals (CA).

In 1997, respondent Vicente C. Ponce filed a string of criminal complaints against petitioner Nicasio I. Alcantara and his family, hereafter the Alcantaras, including one for estafa against petitioner in the Makati Prosecutor's Office docketed as I.S. No. 97-39547. In essence, respondent Ponce alleged that petitioner had swindled him out of 3,000,000 shares of Floro Cement Corporation.

It was in the course of the preliminary investigation of the complaint for estafa that respondent Ponce, shortly after giving his sur-rejoinder affidavit,<sup>[4]</sup> submitted to the investigating prosecutor a newsletter<sup>[5]</sup> purporting to be a belated annex to the affidavit. It was prefaced with the quotation "For every extraordinary fortune there is a great crime" and the text:

An example is Marcos. We need not discuss this.

Second example is the Alcantaras.

- a) Overshipment of log;                      b) Land grabbing;
- c) Corruption of public office; d) Corporate grabbing.

The newsletter then went on to discuss SEC Case No. 2507 which, in the sur-rejoinder affidavit, respondent Ponce described as being the forefather of all the cases he had filed against the Alcantaras. In SEC Case No. 2507 which the Securities and Exchange Commission *en banc* decided against him, Ponce accused the Alcantaras of defrauding him of his shares in Iligan Cement Corporation.

On December 3, 1997, petitioner filed a complaint for libel against respondent Ponce with the Makati Prosecutor's Office<sup>[6]</sup> in connection with the aforesaid newsletter. He claimed that: (1) the statements therein were defamatory; (2) respondent had circulated it in the Makati Prosecutor's Office and (3) the newsletter could not be considered an annex to the sur-rejoinder because respondent had not attached it to the said affidavit but had given it thereafter.

The preliminary investigation was conducted by City Prosecutor Imelda P. Saulog.

On March 17, 1998, Prosecutor Saugog issued a resolution<sup>[7]</sup> finding probable cause for libel and recommending the filing of an information<sup>[8]</sup> in court. Thereafter, the case was filed with the Regional Trial Court of Makati and raffled to Judge Tranquil Salvador of Branch 63.

However, respondent Ponce filed a petition for review with the Secretary of Justice, who reversed the City Prosecutor in a resolution dated February 28, 2000.<sup>[9]</sup> This reversal was based on the finding that the newsletter was a privileged communication, having been submitted to the investigating prosecutor Benjamin R. Bautista as an intended annex to respondent's sur-rejoinder. The Secretary of Justice thus directed the withdrawal of the information.

Petitioner filed a motion for reconsideration<sup>[10]</sup> but it was denied.<sup>[11]</sup>

Petitioner elevated the matter *via* petition for certiorari to the CA where it was docketed as CA-G.R. SP No. 61543. In a decision dated August 29, 2002, the CA found that the Secretary of Justice committed grave abuse of discretion, set aside the latter's resolution and directed the reinstatement of the criminal case.<sup>[12]</sup> After unsuccessfully moving for reconsideration in the Department of Justice, respondent Ponce attempted to elevate the matter to the Supreme Court by way of a petition for review on certiorari. The case was docketed as G.R. No. 157105. However, we denied respondent Ponce's motion for extension for time to file his petition<sup>[13]</sup> as well as his subsequent motions for reconsideration.

In the meantime, however, before CA-G.R. SP No. 61543 was decided, the Office of the Makati City Prosecutor, in deference to the resolution of the Justice Secretary, filed a motion to withdraw information, which the trial court granted on September 28, 2001.<sup>[14]</sup> The trial court ruled that the absence of the essential element of publicity precluded the commission of the crime of libel. Petitioner moved for reconsideration of the withdrawal but the trial court denied the motion in an order dated March 21, 2002.<sup>[15]</sup>

On June 17, 2002, petitioner filed another petition for certiorari in the CA, docketed as CA-G.R. SP No. 71189. In this case, the CA rendered the assailed decision.

The principal question for our consideration is whether or not the CA, in its decision in CA-G.R. SP No. 71189, gravely erred in finding that Judge Salvador had not committed grave abuse of discretion for granting the withdrawal of the information for libel against respondent Ponce.

The crime of libel, as defined in Article 353 of the Revised Penal Code,<sup>[16]</sup> has the following elements:

- (1) imputation of a crime, vice or defect, real or imaginary, or any act, omission, condition, status or circumstance;
- (2) publicity or publication;
- (3) malice;

(4) direction of such imputation at a natural or juridical person, or even a dead person and

(5) tendency to cause the dishonor, discredit or contempt of the person defamed.

The factual antecedents are undisputed. The only issue is whether or not the controversial newsletter constituted privileged communication, which would exempt it from libel.

According to the Special Fifth Division of the CA:

It is a settled principle in this jurisdiction that statements made in the course of judicial proceedings are absolutely privileged. This absolute privilege remains regardless of the defamatory tenor and the presence of malice if the same are *relevant, pertinent* or *material* to the cause in hand or subject of the inquiry. The lone requirement imposed to maintain the cloak of absolute privilege is the *test of relevancy*.

In this case, a reading of the Sur-Rejoinder Affidavit, contrary to petitioner's submission, instantly shows that there was sufficient reference to the "newsletter" which justified the Justice Secretary and respondent Judge in holding that private respondent actually intended the said article to be included as an annex attached to said pleading and that the same was merely omitted and belatedly submitted to Prosecutor Bautista during the preliminary investigation. Such "sufficient reference" is shown by the fact that the newsletter is about SEC Case No. 2507 the very same case being discussed by private respondent in pages 8 to 12 of his Sur-Rejoinder Affidavit and hence, petitioner's claim that Annex "F" mentioned together with Annex "E", both articles showing the "devious maneuvering" of petitioner in the said case, refers to another article. And even if the supposed Exhibit "F" could refer also to that article "So The Public May Know," such circumstance will not exclude the subject "newsletter" as an intended annex to the said pleading as in fact private respondent explicitly mentioned "articles" without stating that there were only two (2) particular articles being referred or which of those articles caused to be published by his counsel.

As the Justice Secretary opined and which position the respondent Judge adopted, the "newsletter" containing the defamatory statement is relevant and pertinent to the criminal complaint for estafa then under preliminary investigation. The crime of estafa involves deceit, dishonesty and other fraudulent acts. The inclusion in the Sur-Rejoinder Affidavit of the "newsletter" discussing the alleged "corporate grabbing" by petitioner will tend to support private respondent's case of estafa against petitioner insofar as such alleged "corporate grabbing" will highlight or manifest petitioner's propensity for dishonest dealing or fraudulent machinations. There is therefore no doubt that the subject "newsletter" is relevant and pertinent to the criminal complaint for estafa, and hence the same comes within the protective cloak of absolutely privileged communications as to exempt private respondent from liability for libel or damages.