

## THIRD DIVISION

[ G.R. NO. 167910, July 17, 2007 ]

**MUSTAPHA M. GANDAROSA, PETITIONER, VS. EVARISTO FLORES  
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the 1997 Revised Rules of Civil Procedure, seeking to reverse and set aside the Decision,<sup>[2]</sup> dated 24 August 2004 of the Court of Appeals in CA-G.R. SP No. 77163, dismissing petitioner Mustapha M. Gandarosa's Petition for Review of the Order<sup>[3]</sup> dated 24 July 2002 of the Regional Trial Court (RTC), Iloilo City, Branch 31, which denied the motion of the prosecution to amend the Information by excluding petitioner from the charge in Criminal Case No. 00-52992 for Libel, and its Resolution,<sup>[4]</sup> dated 12 April 2005 denying reconsideration thereon.

On 23 June 2000, the *Daily Informer*, a newspaper of daily circulation in Iloilo City, touted the banner headline, "*Gandarosa Wants Flores Out for Personal Convenience? 'Back-door-pay' anomaly exposed.*"<sup>[5]</sup> According to the article, petitioner, in his capacity as the Assistant Regional Director of the Bureau of Internal Revenue (BIR) - Regional Office, revealed to members of the media that high-ranking BIR officials, among them Regional Director Sonia Flores and Revenue District Officer Willy Narnola, are involved in anomalous transactions to favor certain taxpayers in the assessment of their taxes. A photo of Sonia Flores and Willy Narnola was similarly plastered on the newspaper's front page. This prompted respondent Evaristo Flores, husband of Sonia Flores and with the conformity of the latter, to file a Complaint (I.S. No. 2075-2000) with the Office of the City Prosecutor of Iloilo City against petitioner, Manny Regalado Alcalde, the author of the aforesaid article; and Rey P. Alcalde and Bernie G. Miaque, editor and publisher, respectively, of the *Daily Informer*.

On 21 August 2000, Investigating Prosecutor Nora Causing-Española of the Office of the City Prosecutor, Iloilo City, issued a Resolution<sup>[6]</sup> finding probable cause to hold petitioner and his therein co-respondents liable for Libel, and recommended the filing of the corresponding Information in court. Petitioner sought reconsideration thereon.

Pending the resolution of the Motion for Reconsideration of the 21 August 2000 Resolution, an Information<sup>[7]</sup> for Libel was filed before the RTC of Iloilo City, Branch 31 against petitioner, Manny Regalado Alcalde, Rey P. Alcalde and Bernie G. Miaque, charging, thus:

INFORMATION

The undersigned City Prosecutor accuses [petitioner] MUSTAPHA "MUSS" GANDAROSA, EMMANUEL "MANNY" REGALADO ALCALDE, REY P. ALCALDE AND BERNIE G. MIAQUE, whose maternal surnames, dates and places of birth cannot be ascertained, of the crime of LIBEL under Art. 353 in relation to Art. 355, all of the Revised Penal Code, committed as follows:

That on or about June 23, 2000, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, the said accused, Emmanuel "Manny" Regalado Alcalde, as the author, Rey P. Alcalde as Managing Editor of the Daily Informer, Bernie G. Miaque as the Publisher of the Daily Informer, a daily newspaper published in the City of Iloilo and of general circulation in Western Visayas, and Mustapha "Muss" Gandarosa, Assistant Regional Director of the Bureau of Internal Revenue, Revenue Region 11, as the source, conspiring and confederating with each other, working together and helping one another, did then and there willfully, unlawfully and criminally and with the intention of attacking the honesty, virtue and reputation of Sonia Flores, Regional Director of the Bureau of Internal Revenue, Revenue Region 11, write, compose and publish and permit and cause to be written, composed and published in the June 23, 2000 issue of the Daily Informer the following defamatory and libelous statements, as follows:

"The latest one is dubbed as "back-door-pay" where high (sic) BIR officials like RD Flores and Revenue District Officer (RDO) Willy Narnola enter the office through the backdoor where hands with envelopes exchange and the persons concerned get their share from illegitimate transactions in the Bureau.

x x x x

x x x the envelope given to Flores is an open and daily reality by the examiners after they have assessed payments."

Which statements are included in the following article:

"BACK-DOOR-PAY ANOMALY EXPOSED"  
by: Manny Regalado Alcalde

A scheme on how money changes hands right inside the BIR Regional Office compound was revealed to the media yesterday by no less than Assistant Regional [D]irecto Mustapha Gandarosa, while a source who requested not to be identified told the INFORMER that "Muss" Gandarosa is blinded by his ulterior motives, the reason why he's coming out with the expos' against his very own office.

According to the INFORMER source[,] Gandarosa was hurt when he was not appointed Regional Director and instead it was Mrs. Sonia Flores who was appointed to the position by the BIR Commissioner Beethoven Rualo.

The source alleged Gandarosa has since then been waiting for an opportunity to put down Regional Director Sonia Flores.

However, this was denied by Gandarosa himself in an interview with the INFORMERS (sic).

According to Gandarosa, the issues thrown against RD Sonia Flores are legitimate and the series of exposes were intended to stop the irregularities that exist in the BIR Revenue Region No. 11.

Yesterday, another anomaly was revealed to a select group of media practitioners by ARD Gandarosa.

The latest one is dubbed as "Back-door-pay" where high BIR (sic) officials like RD Flores and Revenue [D]istrict Officer (RDO) Willy Narnalao enters (sic) the office through the backdoor where hands with envelopes exchange and the persons concerned get their share from illegitimate transactions in the Bureau.

Gandarosa admitted he had been subjected to such temptations but upon learning that the money given him came from a taxpayer, he refused to accept his supposed share and let go of the officer. According to the Muslim Assistant Regional Director the envelope given to Flores is an open and daily reality by the examiners after they have assessed payments.

Recently a source told the INFORMERS (sic) that from January to May this year, a high[-]ranking official may have pocketed some P50 million from various taxpayers after their tax assessments were adjusted in exchange for payolas that at times reach millions.

The source further said that another official gets an average of P50,000 to P100,000 per week."

Which defamatory and libelous statements are false and malicious and exposed of Sonia Flores and her husband, Evaristo Flores, to public hatred, contempt, ridicule and dishonor.<sup>[8]</sup>

The case was docketed as Crim. Case No. 00-52992.

On 30 January 2001, petitioner filed an Extremely Urgent Motion to Suspend Proceedings before the RTC, stating therein that he had a pending Motion for Reconsideration with the Office of the City Prosecutor which sought to reverse its finding of probable cause against him.<sup>[9]</sup> On 9 February 2001, petitioner filed a Supplemental Motion for Reconsideration.<sup>[10]</sup>

In the meantime, or on 20 February 2001, the Office of the City Prosecutor released a Resolution<sup>[11]</sup> denying petitioner's Motion for Reconsideration of the 21 August

2000 Resolution which found probable cause against him for Libel. The Office of the Prosecutor declared that it had lost jurisdiction over the case upon the filing of the Information for Libel in the proper court.

Meanwhile, on 13 March 2001, the RTC rendered an Order<sup>[12]</sup> denying his Extremely Urgent Motion to Suspend Proceedings. The RTC spelled out its *raison d'être*, thus:

The grounds advanced by the [petitioner] to suspend proceedings, namely, that there is a pending Motion for Reconsideration filed by [petitioner] with the City Prosecutor and that probable cause against him does not exist are not legal grounds to suspend proceedings especially when the Court has acquired valid jurisdiction over the accused. Under Sec. 11(c), Rule 117 (sic), Revised Rules of Criminal Procedure, the arraignment shall be suspended in the following cases: x x x (c) a petition for review of the resolution of the prosecutor is pending at either the Department of Justice or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. In this case the Motion for Reconsideration should have been filed with the Office of the Ombudsman-Visayas which is the reviewing office and not with the City Prosecutor. Consequently, there is no petition for review pending at the offices mentioned in Sec. 11(c), Rule 117 (sic), aforesaid.<sup>[13]</sup>

Subsequently, on 17 April 2001, petitioner filed an Omnibus Motion,<sup>[14]</sup> seeking reconsideration of the above Order, and for the quashal of the Information. This was opposed by the prosecution through the private prosecutor.<sup>[15]</sup> Later, the Office of the Ombudsman (Visayas) filed its Opposition to petitioner's Motion to Quash the information, praying for the denial thereof and for the continuance of the proceedings.<sup>[16]</sup>

Pending the resolution of his Omnibus Motion before the RTC, or on 31 May 2001, petitioner, aggrieved by the earlier denial by the Office of the City Prosecutor of his Motion for Reconsideration,<sup>[17]</sup> filed a Petition for Review with the Department of Justice (DOJ), praying that the earlier Resolution of the Office of the Prosecutor, dated 20 February 2001, be reconsidered and set aside; that a new one be rendered finding no probable cause against him and ordering the City Prosecutor of Iloilo City to withdraw the Information.<sup>[18]</sup>

On 24 July 2001, the RTC issued an Order denying petitioner's Omnibus Motion of 17 April 2001 for lack of merit, and setting petitioner's arraignment.<sup>[19]</sup> Petitioner filed with the RTC a Motion for Reconsideration, including a Supplemental Motion for Reconsideration, praying once again that the Information filed against him be quashed.<sup>[20]</sup> A hearing thereon was conducted on 24 August 2001<sup>[21]</sup> whereby the prosecution was given 10 days to comment from the said date.<sup>[22]</sup> In the Order<sup>[23]</sup> of even date, the RTC ordered the issuance of subpoenas to petitioner and his co-accused. The trial court also set the arraignment on 25 September 2001. However, petitioner failed to appear as scheduled. Thus, in view of his unjustified absence, the RTC ordered that the bond posted for his provisional liberty be cancelled and a warrant of arrest be issued against him.<sup>[24]</sup>

Petitioner sought reconsideration thereon. In his Motion, petitioner prayed for the last resetting of the arraignment to 30 October 2001, and further manifested that on the said date, his arraignment shall proceed forthwith irrespective of whether his petition before the DOJ shall have been resolved.<sup>[25]</sup>

The RTC found the Motion to be well-taken. Hence, on 31 October 2001, petitioner was arraigned. He pleaded not guilty to the charge. Thereafter, the case was set for pre-trial.

Several months following his arraignment, the DOJ issued a Resolution<sup>[26]</sup> on 12 February 2002, reversing the Resolution of the City Prosecutor of Iloilo City, and directing the amendment of the Information for Libel and the dropping of petitioner from the charge.<sup>[27]</sup> It held, *inter alia*, that the accusation is not synonymous with guilt; and only the persons who publish, exhibit, or cause the publication or exhibition of any defamation in writing are the ones responsible for Libel; and from the evidence presented, petitioner did not cause the same.<sup>[28]</sup>

On 7 March 2002, in obedience to the DOJ Resolution of 12 February 2002, the Office of the City Prosecutor filed with the RTC a Motion with Leave of Court to Amend Information.<sup>[29]</sup>

The RTC rendered an Order,<sup>[30]</sup> dated 24 July 2002, denying the Motion to Amend Information. According to the RTC, petitioner was already arraigned on 30 October 2001, and the pre-trial was set thereafter. The RTC rationalized in this wise, thus:

It must be remembered that said [petitioner] was already arraigned on October 30, 2001, and the pre-trial set thereafter. [Petitioner] did not disclose to the Department of Justice that he was already arraigned, otherwise, had he done so, the Department of Justice, could have dismissed his appeal for being moot and academic.

Nonetheless, this instant Motion [to Amend Information] [was] filed after the said [petitioner] has already been arraigned. Under Section 4, Rule 117, which allows the amendment of complaint or information, the same shall be done before the accused entered his plea, hence, the desirability of amendment, since the Court will not entertain any Motion to Quash, after the arraignment pursuant to Section 1, Rule 117. This is so because with accused'[s] arraignment, the issue has been joined.

Thus, this Court having already acquired jurisdiction, does not lose it despite the resolution of the Secretary of Justice. It has the option to grant or deny the Motion to Dismiss filed by the fiscal, whether before or after the arraignment of the accused (*Ledesma v. Court of Appeals*, 278 SCRA 657).

WHEREFORE, the instant Motion is hereby Denied for lack of merit.<sup>[31]</sup>

Petitioner sought reconsideration of the RTC's denial to amend the Information by filing an Omnibus Motion,<sup>[32]</sup> dated 19 August 2002. He reiterated his prayer that new judgment be rendered giving due course to his Motion to Amend the Information by dropping his name from among those charged. On 20 March 2003,