

THIRD DIVISION

[G.R. NO. 168340, December 05, 2006]

RAFAEL GONZALES, PETITIONER, VS. HON. TRANQUIL P. SALVADOR IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 63, AND GLEN DALE A.K.A. RENE MARTEL,^[*] RESPONDENTS.

DECISION

CARPIO MORALES, J.:

Assailed via petition for review on certiorari is the May 26, 2005 Decision^[1] of the Court of Appeals finding no grave abuse of discretion on the part of Judge Tranquil P. Salvador, Jr. of the Regional Trial Court (RTC) of Makati City, Branch 63 in issuing the Orders dated July 16, 2003 and June 10, 2004 in Criminal Case No. 99-1567, "*People of the Philippines vs. Glen Dale a.k.a. Rene Martel.*"

The antecedent facts are as follows:

Rafael Gonzales (petitioner) filed before the Makati City Prosecutor's Office a complaint against respondent Glen Dale arising from the publication in the January 7, 1999 issue of *Today* of his article, entitled "Glad Tidings for Manila Polo Club members" in the "Bizz 'N' Fizz" column, under the *nom de plume* Rene Martel.^[2]

By Resolution of May 31, 1999, the Prosecutor's Office found probable cause to hale respondent into court for Libel. An Information was thus filed before the Makati RTC against respondent reading:

x x x x

That on or about the 7th day of January 1999 in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, has a regular column named "BIZZ 'N' FIZZ" in *Today* newspaper, did then and there willfully, unlawfully and feloniously with malicious intent of impeaching the honesty, virtue and reputation of the complainant RAFAEL GONZALES, and with further malicious intent of injuring his good name and exposing him to public hatred, contempt and ridicule, publish or cause to be published in a column of *Today*, a newspaper of general circulation, the words and phrases which reads, among others, the following:

"A lone voice of dissent has been raised by board member Ambassador Rafael Gonzales, who circulated a letter expressing his opposition to the plan to bring in a management company to run the show at the MPC.

"Gonzales (who sounds in his letter to members like a type-writer salesman making his pitch in the age of the word-processor) outlines in passionate terms several reasons why he is against the plan. But then, curiously, he self-defeatingly goes on to say that the "biggest plus in hiring a management company is to streamline the operations and make the club financially viable" Hello... Ambassador Gonzales are you in outer space or what?

"History note: Ambassador Gonzales, who now fronts an obscure real-estate company called Worldmaster Corp: used to be the gofer of Benjamin "Kokoy" Romualdez (brother of you know-who) and later the baby-sitter of Bongbong Marcos.

"Some MPC members are taking a cynical view of Gonzales's opposition. They claim that his previously held view that matters be held in abeyance for at least a year might have to do with the fact that by that time his term as a director would have expired- and with all the signing privileges that go with the position". (underscoring supplied).

wherein the said accused maliciously and without justifiable motive falsely imputed, inferred and insinuated in the column published in Today, which tends and is calculated to induce the reader or public to suppose and understand that Rafael Gonzales his nice (sic) or defect or committed on (sic) act or omission, condition or status that is sufficient to impeach his honesty, virtue or imputation (sic) or to hold Rafael Gonzales in public ridicule, to the damage and prejudice of the said complainant Rafael Gonzales in such amount or amounts as maybe (sic) proven in court.

CONTRARY TO LAW.^[3]

The case was raffled to Branch 63 of the Makati RTC.

After posting the necessary cash bond for his provisional liberty,^[4] respondent filed with the Department of Justice (DOJ) a Petition for Review^[5] challenging the Resolution of the City Prosecutor's Office.

By Resolutions of May 4, 2000 and January 12, 2001, the DOJ dismissed respondent's Petition for Review and denied his Motion for Reconsideration, respectively.^[6]

Respondent elevated the DOJ Resolutions to the Court of Appeals via Petition for Certiorari and Prohibition with prayer for the issuance of preliminary injunction and temporary restraining order.^[7]

As no preliminary injunction or restraining order was issued by the Court of Appeals, respondent was arraigned before the trial court and pleaded "not guilty" to the offense charged.^[8]

Respondent later filed a Motion to Quash^[9] on the ground of lack of jurisdiction over

the offense charged,^[10] there being no allegation in the Information that the offended party-herein petitioner actually resides in Makati or that the allegedly libelous article was printed or first published in Makati. Respondent cited Article 360^[11] of the Revised Penal Code as prescribing a specific venue for libel.

After the parties ventilated their respective positions, the trial court, by Order of May 29, 2002,^[12] granted respondent's Motion to Quash, holding that the Information was defective for failure to allege that the newspaper article was printed and first published in Makati or that petitioner actually resided in Makati at the time of the commission of the act complained of.

On June 25, 2002, 26 days after receiving^[13] the May 29, 2002 Order, petitioner filed a Motion (to Order the Public Prosecutor to Amend the Information and to Admit said Amended Information),^[14] invoking Sections 4 and 5 of Rule 117 of the Rules of Court. Respondent opposed^[15] the motion on the ground that it was beyond the jurisdiction of the trial court to reconsider or recall its May 29, 2002 Order which became final after the lapse of 15 days. Respondent added that there was nothing to consider for admission since the supposed amended information was not attached to the motion.

Replying,^[16] petitioner argued that the motion was timely filed since the Rules allow the filing of a new information "within such further time as the court may allow for good cause" and the May 29, 2002 Order failed to provide a period within which the prosecution could file an amended information. Petitioner further argued that a defective or deficient information cannot be the proper subject of a motion for reconsideration or appeal under the Rules, hence, not subject to the reglementary periods provided therein; and that the Amended Information would be filed once the court directed the amendment of the Information.

By Order of December 26, 2002,^[17] the trial court granted petitioner's Motion and directed the public prosecutor to amend the Information within ten (10) days from notice, and to forthwith file the same before the court.

In compliance with the trial court's order, the public prosecutor filed an Amended Information.

From the Order of December 26, 2002, respondent filed a Motion for Reconsideration^[18] on the ground that under Section 4 of Rule 117 the amendment of a defective information may be made only before a motion to quash is granted and, once quashed, especially in a case where the unqualified quashal had become final, the information can no longer be amended. Respondent added that under Section 5 of Rule 117, the order to file another information must be contained in the same order sustaining the motion to quash since the accused would have been discharged by the time the new information is filed.

By Order of July 16, 2003,^[19] the trial court granted respondent's Motion for Reconsideration and accordingly set aside its December 26, 2002 Order. Petitioner filed a Motion for Reconsideration of said July 16, 2003 Order which the trial court denied by Order of June 10, 2004.^[20]

Petitioner thereupon filed with the Court of Appeals a Petition for Certiorari assailing the trial court's Orders dated July 16, 2003 and June 10, 2004.

By the challenged Decision of May 26, 2005, the Court of Appeals dismissed petitioner's petition for lack of merit.

Hence, the present appeal which, in the main, faults the appellate court in holding that under Rule 117, Sections 4 and 5, the order to file another information was discretionary with the court.

The pertinent rule applicable to the present petition – Sections 4 and 5 of Rule 117 – reads:

SEC. 4. Amendment of complaint or information. – If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

SEC. 5. Effect of sustaining the motion to quash. – If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge.^[21]
(Underscoring supplied)

Section 4 covers the **amendment** of an information. Section 5 deals with the filing of a **new** information.

The amendment of an information under Section 4 of Rule 117 applies if the trial court finds that there is a defect in the information and the defect can be cured by amendment, in which case the court shall order the prosecution to amend the information. Once the court issues an order granting the motion to quash the information and such order becomes final and executory, however, there is nothing more to amend.

In cases falling under Section 5 of Rule 117, where the motion to quash is sustained on grounds other than those stated in Section 6^[22] of the same Rule, the trial court has the discretion to order the filing of another information within a specified period which is extendible to such further time as the court may allow for good cause. The order to file another information, if determined to be warranted by the circumstances of the case, must be contained in the same order granting the motion to quash. If the order sustaining the motion to quash does not order the filing of another information, and said order becomes final and executory, then the court