

FIRST DIVISION

[G.R. No. 142396, February 11, 2003]

**KHOSROW MINUCHER, PETITIONER, VS. HON. COURT OF
APPEALS AND ARTHUR SCALZO, RESPONDENTS.**

D E C I S I O N

VITUG, J.:

Sometime in May 1986, an Information for violation of Section 4 of Republic Act No. 6425, otherwise also known as the "Dangerous Drugs Act of 1972," was filed against petitioner Khosrow Minucher and one Abbas Torabian with the Regional Trial Court, Branch 151, of Pasig City. The criminal charge followed a "buy-bust operation" conducted by the Philippine police narcotic agents in the house of Minucher, an Iranian national, where a quantity of heroin, a prohibited drug, was said to have been seized. The narcotic agents were accompanied by private respondent Arthur Scalzo who would, in due time, become one of the principal witnesses for the prosecution. On 08 January 1988, Presiding Judge Eutropio Migrino rendered a decision acquitting the two accused.

On 03 August 1988, Minucher filed Civil Case No. 88-45691 before the Regional Trial Court (RTC), Branch 19, of Manila for damages on account of what he claimed to have been trumped-up charges of drug trafficking made by Arthur Scalzo. The Manila RTC detailed what it had found to be the facts and circumstances surrounding the case.

"The testimony of the plaintiff disclosed that he is an Iranian national. He came to the Philippines to study in the University of the Philippines in 1974. In 1976, under the regime of the Shah of Iran, he was appointed Labor Attaché for the Iranian Embassies in Tokyo, Japan and Manila, Philippines. When the Shah of Iran was deposed by Ayatollah Khomeini, plaintiff became a refugee of the United Nations and continued to stay in the Philippines. He headed the Iranian National Resistance Movement in the Philippines.

"He came to know the defendant on May 13, 1986, when the latter was brought to his house and introduced to him by a certain Jose Iñigo, an informer of the Intelligence Unit of the military. Jose Iñigo, on the other hand, was met by plaintiff at the office of Atty. Crisanto Saruca, a lawyer for several Iranians whom plaintiff assisted as head of the anti-Khomeini movement in the Philippines.

"During his first meeting with the defendant on May 13, 1986, upon the introduction of Jose Iñigo, the defendant expressed his interest in buying caviar. As a matter of fact, he bought two kilos of caviar from plaintiff and paid P10,000.00 for it. Selling caviar, aside from that of Persian carpets, pistachio nuts and other Iranian products was his business after

the Khomeini government cut his pension of over \$3,000.00 per month. During their introduction in that meeting, the defendant gave the plaintiff his calling card, which showed that he is working at the US Embassy in the Philippines, as a special agent of the Drug Enforcement Administration, Department of Justice, of the United States, and gave his address as US Embassy, Manila. At the back of the card appears a telephone number in defendant's own handwriting, the number of which he can also be contacted.

"It was also during this first meeting that plaintiff expressed his desire to obtain a US Visa for his wife and the wife of a countryman named Abbas Torabian. The defendant told him that he [could] help plaintiff for a fee of \$2,000.00 per visa. Their conversation, however, was more concentrated on politics, carpets and caviar. Thereafter, the defendant promised to see plaintiff again.

"On May 19, 1986, the defendant called the plaintiff and invited the latter for dinner at Mario's Restaurant at Makati. He wanted to buy 200 grams of caviar. Plaintiff brought the merchandize but for the reason that the defendant was not yet there, he requested the restaurant people to x x x place the same in the refrigerator. Defendant, however, came and plaintiff gave him the caviar for which he was paid. Then their conversation was again focused on politics and business.

"On May 26, 1986, defendant visited plaintiff again at the latter's residence for 18 years at Kapitolyo, Pasig. The defendant wanted to buy a pair of carpets which plaintiff valued at \$27,900.00. After some haggling, they agreed at \$24,000.00. For the reason that defendant did not yet have the money, they agreed that defendant would come back the next day. The following day, at 1:00 p.m., he came back with his \$24,000.00, which he gave to the plaintiff, and the latter, in turn, gave him the pair of carpets.

"At about 3:00 in the afternoon of May 27, 1986, the defendant came back again to plaintiff's house and directly proceeded to the latter's bedroom, where the latter and his countryman, Abbas Torabian, were playing chess. Plaintiff opened his safe in the bedroom and obtained \$2,000.00 from it, gave it to the defendant for the latter's fee in obtaining a visa for plaintiff's wife. The defendant told him that he would be leaving the Philippines very soon and requested him to come out of the house for a while so that he can introduce him to his cousin waiting in a cab. Without much ado, and without putting on his shirt as he was only in his pajama pants, he followed the defendant where he saw a parked cab opposite the street. To his complete surprise, an American jumped out of the cab with a drawn high-powered gun. He was in the company of about 30 to 40 Filipino soldiers with 6 Americans, all armed. He was handcuffed and after about 20 minutes in the street, he was brought inside the house by the defendant. He was made to sit down while in handcuffs while the defendant was inside his bedroom. The defendant came out of the bedroom and out from defendant's attaché case, he took something and placed it on the table in front of the plaintiff. They also took plaintiff's wife who was at that time at the

boutique near his house and likewise arrested Torabian, who was playing chess with him in the bedroom and both were handcuffed together. Plaintiff was not told why he was being handcuffed and why the privacy of his house, especially his bedroom was invaded by defendant. He was not allowed to use the telephone. In fact, his telephone was unplugged. He asked for any warrant, but the defendant told him to 'shut up.' He was nevertheless told that he would be able to call for his lawyer who can defend him.

"The plaintiff took note of the fact that when the defendant invited him to come out to meet his cousin, his safe was opened where he kept the \$24,000.00 the defendant paid for the carpets and another \$8,000.00 which he also placed in the safe together with a bracelet worth \$15,000.00 and a pair of earrings worth \$10,000.00. He also discovered missing upon his release his 8 pieces hand-made Persian carpets, valued at \$65,000.00, a painting he bought for P30,000.00 together with his TV and betamax sets. He claimed that when he was handcuffed, the defendant took his keys from his wallet. There was, therefore, nothing left in his house.

"That his arrest as a heroin trafficker x x x had been well publicized throughout the world, in various newspapers, particularly in Australia, America, Central Asia and in the Philippines. He was identified in the papers as an international drug trafficker. x x x

In fact, the arrest of defendant and Torabian was likewise on television, not only in the Philippines, but also in America and in Germany. His friends in said places informed him that they saw him on TV with said news.

"After the arrest made on plaintiff and Torabian, they were brought to Camp Crame handcuffed together, where they were detained for three days without food and water."^[1]

During the trial, the law firm of Luna, Sison and Manas, filed a special appearance for Scalzo and moved for extension of time to file an answer pending a supposed advice from the United States Department of State and Department of Justice on the defenses to be raised. The trial court granted the motion. On 27 October 1988, Scalzo filed another special appearance to quash the summons on the ground that he, not being a resident of the Philippines and the action being one *in personam*, was beyond the processes of the court. The motion was denied by the court, in its order of 13 December 1988, holding that the filing by Scalzo of a motion for extension of time to file an answer to the complaint was a voluntary appearance equivalent to service of summons which could likewise be construed a waiver of the requirement of formal notice. Scalzo filed a motion for reconsideration of the court order, contending that a motion for an extension of time to file an answer was not a voluntary appearance equivalent to service of summons since it did not seek an affirmative relief. Scalzo argued that in cases involving the United States government, as well as its agencies and officials, a motion for extension was peculiarly unavoidable due to the need (1) for both the Department of State and the Department of Justice to agree on the defenses to be raised and (2) to refer the case to a Philippine lawyer who would be expected to first review the case. The

court *a quo* denied the motion for reconsideration in its order of 15 October 1989.

Scalzo filed a petition for review with the Court of Appeals, there docketed CA-G.R. No. 17023, assailing the denial. In a decision, dated 06 October 1989, the appellate court denied the petition and affirmed the ruling of the trial court. Scalzo then elevated the incident in a petition for review on *certiorari*, docketed G.R. No. 91173, to this Court. The petition, however, was denied for its failure to comply with SC Circular No. 1-88; in any event, the Court added, Scalzo had failed to show that the appellate court was in error in its questioned judgment.

Meanwhile, at the court *a quo*, an order, dated 09 February 1990, was issued (a) declaring Scalzo in default for his failure to file a responsive pleading (answer) and (b) setting the case for the reception of evidence. On 12 March 1990, Scalzo filed a motion to set aside the order of default and to admit his answer to the complaint. Granting the motion, the trial court set the case for pre-trial. In his answer, Scalzo denied the material allegations of the complaint and raised the affirmative defenses (a) of Minucher's failure to state a cause of action in his complaint and (b) that Scalzo had acted in the discharge of his official duties as being merely an agent of the Drug Enforcement Administration of the United States Department of Justice. Scalzo interposed a counterclaim of P100,000.00 to answer for attorneys' fees and expenses of litigation.

Then, on 14 June 1990, after almost two years since the institution of the civil case, Scalzo filed a motion to dismiss the complaint on the ground that, being a special agent of the United States Drug Enforcement Administration, he was entitled to diplomatic immunity. He attached to his motion Diplomatic Note No. 414 of the United States Embassy, dated 29 May 1990, addressed to the Department of Foreign Affairs of the Philippines and a Certification, dated 11 June 1990, of Vice Consul Donna Woodward, certifying that the note is a true and faithful copy of its original. In an order of 25 June 1990, the trial court denied the motion to dismiss.

On 27 July 1990, Scalzo filed a petition for *certiorari* with injunction with this Court, docketed G.R. No. 94257 and entitled "Arthur W. Scalzo, Jr., vs. Hon. Wenceslao Polo, et al.," asking that the complaint in Civil Case No. 88-45691 be ordered dismissed. The case was referred to the Court of Appeals, there docketed CA-G.R. SP No. 22505, per this Court's resolution of 07 August 1990. On 31 October 1990, the Court of Appeals promulgated its decision sustaining the diplomatic immunity of Scalzo and ordering the dismissal of the complaint against him. Minucher filed a petition for review with this Court, docketed G.R. No. 97765 and entitled "Khosrow Minucher vs. the Honorable Court of Appeals, et. al." (cited in 214 SCRA 242), appealing the judgment of the Court of Appeals. In a decision, dated 24 September 1992, penned by Justice (now Chief Justice) Hilario Davide, Jr., this Court reversed the decision of the appellate court and remanded the case to the lower court for trial. The remand was ordered on the theses (a) that the Court of Appeals erred in granting the motion to dismiss of Scalzo for lack of jurisdiction over his person without even considering the issue of the authenticity of Diplomatic Note No. 414 and (b) that the complaint contained sufficient allegations to the effect that Scalzo committed the imputed acts in his personal capacity and outside the scope of his official duties and, absent any evidence to the contrary, the issue on Scalzo's diplomatic immunity could not be taken up.

The Manila RTC thus continued with its hearings on the case. On 17 November 1995, the trial court reached a decision; it adjudged:

"WHEREFORE, and in view of all the foregoing considerations, judgment is hereby rendered for the plaintiff, who successfully established his claim by sufficient evidence, against the defendant in the manner following:

"`Adjudging defendant liable to plaintiff in actual and compensatory damages of P520,000.00; moral damages in the sum of P10 million; exemplary damages in the sum of P100,000.00; attorney's fees in the sum of P200,000.00 plus costs.

`The Clerk of the Regional Trial Court, Manila, is ordered to take note of the lien of the Court on this judgment to answer for the unpaid docket fees considering that the plaintiff in this case instituted this action as a pauper litigant.'"[2]

While the trial court gave credence to the claim of Scalzo and the evidence presented by him that he was a diplomatic agent entitled to immunity as such, it ruled that he, nevertheless, should be held accountable for the acts complained of committed outside his official duties. On appeal, the Court of Appeals reversed the decision of the trial court and sustained the defense of Scalzo that he was sufficiently clothed with diplomatic immunity during his term of duty and thereby immune from the criminal and civil jurisdiction of the "Receiving State" pursuant to the terms of the Vienna Convention.

Hence, this recourse by Minucher. The instant petition for review raises a two-fold issue: (1) whether or not the doctrine of conclusiveness of judgment, following the decision rendered by this Court in G.R. No. 97765, should have precluded the Court of Appeals from resolving the appeal to it in an entirely different manner, and (2) whether or not Arthur Scalzo is indeed entitled to diplomatic immunity.

The doctrine of conclusiveness of judgment, or its kindred rule of *res judicata*, would require 1) the finality of the prior judgment, 2) a valid jurisdiction over the subject matter and the parties on the part of the court that renders it, 3) a judgment on the merits, and 4) an identity of the parties, subject matter and causes of action.[3] Even while one of the issues submitted in G.R. No. 97765 - "whether or not public respondent Court of Appeals erred in ruling that private respondent Scalzo is a diplomat immune from civil suit conformably with the Vienna Convention on Diplomatic Relations" - is also a pivotal question raised in the instant petition, the ruling in G.R. No. 97765, however, has not resolved that point with finality. Indeed, the Court there has made this observation -

"It may be mentioned in this regard that private respondent himself, in his Pre-trial Brief filed on 13 June 1990, unequivocally states that he would present documentary evidence consisting of DEA records on his investigation and surveillance of plaintiff and on his position and duties as DEA special agent in Manila. Having thus reserved his right to present evidence in support of his position, which is the basis for the alleged diplomatic immunity, the barren self-serving claim in the belated motion