

FIRST DIVISION

[G.R. No. 125865, March 26, 2001]

JEFFREY LIANG (HUEFENG), PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

R E S O L U T I O N

YNARES-SANTIAGO, J.:

This resolves petitioner's Motion for Reconsideration of our Decision dated January 28, 2000, denying the petition for review.

The Motion is anchored on the following arguments:

- 1) THE DFA'S DETERMINATION OF IMMUNITY IS A POLITICAL QUESTION TO BE MADE BY THE EXECUTIVE BRANCH OF THE GOVERNMENT AND IS CONCLUSIVE UPON THE COURTS.
- 2) THE IMMUNITY OF INTERNATIONAL ORGANIZATIONS IS ABSOLUTE.
- 3) THE IMMUNITY EXTENDS TO ALL STAFF OF THE ASIAN DEVELOPMENT BANK (ADB).
- 4) DUE PROCESS WAS FULLY AFFORDED THE COMPLAINANT TO REBUT THE DFA PROTOCOL.
- 5) THE DECISION OF JANUARY 28, 2000 ERRONEOUSLY MADE A FINDING OF FACT ON THE MERITS, NAMELY, THE SLANDERING OF A PERSON WHICH PREJUDGED PETITIONER'S CASE BEFORE THE METROPOLITAN TRIAL COURT (MTC)-MANDALUYONG.
- 6) THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS IS NOT APPLICABLE TO THIS CASE.

This case has its origin in two criminal Informations^[1] for grave oral defamation filed against petitioner, a Chinese national who was employed as an Economist by the Asian Development Bank (ADB), alleging that on separate occasions on January 28 and January 31, 1994, petitioner allegedly uttered defamatory words to Joyce V. Cabal, a member of the clerical staff of ADB. On April 13, 1994, the Metropolitan Trial Court of Mandaluyong City, acting pursuant to an advice from the Department of Foreign Affairs that petitioner enjoyed immunity from legal processes, dismissed the criminal Informations against him. On a petition for certiorari and mandamus filed by the People, the Regional Trial Court of Pasig City, Branch 160, annulled and set aside the order of the Metropolitan Trial Court dismissing the criminal cases.^[2]

Petitioner, thus, brought a petition for review with this Court. On January 28, 2000, we rendered the assailed Decision denying the petition for review. We ruled, in essence, that the immunity granted to officers and staff of the ADB is not absolute; it is limited to acts performed in an official capacity. Furthermore, we held that the immunity cannot cover the commission of a crime such as slander or oral defamation in the name of official duty.

On October 18, 2000, the oral arguments of the parties were heard. This Court also granted the Motion for Intervention of the Department of Foreign Affairs. Thereafter, the parties were directed to submit their respective memorandum.

For the most part, petitioner's Motion for Reconsideration deals with the diplomatic immunity of the ADB, its officials and staff, from legal and judicial processes in the Philippines, as well as the constitutional and political bases thereof. It should be made clear that nowhere in the assailed Decision is diplomatic immunity denied, even remotely. The issue in this case, rather, boils down to whether or not the statements allegedly made by petitioner were uttered while in the performance of his official functions, in order for this case to fall squarely under the provisions of Section 45 (a) of the "Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank," to wit:

Officers and staff of the Bank, including for the purpose of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:

(a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity.

After a careful deliberation of the arguments raised in petitioner's and intervenor's Motions for Reconsideration, we find no cogent reason to disturb our Decision of January 28, 2000. As we have stated therein, the slander of a person, by any stretch, cannot be considered as falling within the purview of the immunity granted to ADB officers and personnel. Petitioner argues that the Decision had the effect of prejudging the criminal case for oral defamation against him. We wish to stress that it did not. What we merely stated therein is that slander, in general, cannot be considered as an act performed in an official capacity. The issue of whether or not petitioner's utterances constituted oral defamation is still for the trial court to determine.

WHEREFORE, in view of the foregoing, the Motions for Reconsideration filed by petitioner and intervenor Department of Foreign Affairs are **DENIED** with **FINALITY**.

SO ORDERED.

Davide, Jr., C.J., join the concurring opinion of Mr. Justice Puno.
Kapunan, and *Pardo, JJ.*, concur.
Puno, J., Pls. See concurring opinion.

[1] Criminal Cases Nos. 53170 & 53171 of the Metropolitan Trial Court of Mandaluyong City, Branch 60, presided by Hon. Ma. Luisa Quijano- Padilla.

[2] SCA Case No. 743 of the Regional Trial Court of Pasig City, Branch 160, presided by Hon. Mariano M. Umali.

CONCURRING OPINION

PUNO, J.:

For resolution is the Motion for Reconsideration filed by petitioner Jeffrey Liang of this Court's decision dated January 28, 2000 which denied the petition for review. We there held that: the protocol communication of the Department of Foreign Affairs to the effect that petitioner Liang is covered by immunity is only preliminary and has no binding effect in courts; the immunity provided for under Section 45(a) of the Headquarters Agreement is subject to the condition that the act be done in an "official capacity"; that slandering a person cannot be said to have been done in an "official capacity" and, hence, it is not covered by the immunity agreement; under the Vienna Convention on Diplomatic Relations, a diplomatic agent, assuming petitioner is such, enjoys immunity from criminal jurisdiction of the receiving state except in the case of an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions; the commission of a crime is not part of official duty; and that a preliminary investigation is not a matter of right in cases cognizable by the Metropolitan Trial Court.

Petitioner's motion for reconsideration is anchored on the following arguments:

1. The DFA's determination of immunity is a political question to be made by the executive branch of the government and is conclusive upon the courts;
2. The immunity of international organizations is absolute;
3. The immunity extends to all staff of the Asian Development Bank (ADB);
4. Due process was fully accorded the complainant to rebut the DFA protocol;
5. The decision of January 28, 2000 erroneously made a finding of fact on the merits, namely, the slandering of a person which prejudged petitioner's case before the Metropolitan Trial Court (MTC)-Mandaluyong; and
6. The Vienna Convention on diplomatic relations is not applicable to this case.

Petitioner contends that a determination of a person's diplomatic immunity by the Department of Foreign Affairs is a **political question**. It is solely within the prerogative of the executive department and is conclusive upon the courts. In support of his submission, petitioner cites the following cases: *WHO vs. Aquino*,^[1] *International Catholic Migration Commission vs. Calleja*,^[2] *The Holy See vs. Rosario, Jr.*,^[3] *Lasco vs. United Nations*,^[4] and *DFA vs. NLRC*.^[5]

It is further contended that the **immunity conferred under the ADB Charter and the Headquarters Agreement is absolute**. It is designed to safeguard the autonomy and independence of international organizations against interference from any authority external to the organizations. It is necessary to allow such organizations to discharge their entrusted functions effectively. The only exceptions to this immunity is when there is an implied or express waiver or when the immunity is expressly limited by statute. The exception allegedly has no application to the case at bar.

Petitioner likewise urges that the international organization's immunity from local jurisdiction empowers the **ADB alone to determine what constitutes "official acts" and the same cannot be subject to different interpretations by the member states**. It asserts that the Headquarters Agreement provides for remedies to check abuses against the exercise of the immunity. Thus, Section 49 states that the "Bank shall waive the immunity accorded to any person if, in its opinion, such immunity would impede the course of justice and the waiver would not prejudice the purposes for which the immunities are accorded." Section 51 allows for consultation between the government and the Bank should the government consider that an abuse has occurred. The same section provides the mechanism for a dispute settlement regarding, among others, issues of interpretation or application of the agreement.

Petitioner's argument that a determination by the Department of Foreign Affairs that he is entitled to diplomatic immunity is a political question binding on the courts, is anchored on the ruling enunciated in the case of *WHO, et al. vs. Aquino, et al.*,^[6] viz:

"It is a recognized principle of international law and under our system of separation of powers that diplomatic immunity is essentially a political question and courts should refuse to look beyond a determination by the executive branch of the government, and where the plea of diplomatic immunity is recognized and affirmed by the executive branch of the government as in the case at bar, it is then the duty of the courts to accept the claim of immunity upon appropriate suggestion by the principal law officer of the government, the Solicitor General in this case, or other officer acting under his direction. Hence, in adherence to the settled principle that courts may not so exercise their jurisdiction by seizure and detention of property, as to embarrass the executive arm of the government in conducting foreign relations, it is accepted doctrine that in such cases the judicial department of the government follows the action of the political branch and will not embarrass the latter by assuming an antagonistic jurisdiction."

This ruling was reiterated in the subsequent cases of ***International Catholic Migration Commission vs. Calleja***;^[7] ***The Holy See vs. Rosario, Jr.***^[8] ***Lasco vs. UN***;^[9] and ***DFA vs. NLRC***.^[10]

The case of ***WHO vs. Aquino*** involved the search and seizure of personal effects of petitioner Leonce Verstuyft, an official of the WHO. Verstuyft was certified to be entitled to diplomatic immunity pursuant to the Host Agreement executed between the Philippines and the WHO.

ICMC vs. Calleja concerned a petition for certification election filed against ICMC and IRRI. As international organizations, ICMC and IRRI were declared to possess diplomatic immunity. It was held that they are not subject to local jurisdictions. It was ruled that the exercise of jurisdiction by the Department of Labor over the case would defeat the very purpose of immunity, which is to shield the affairs of international organizations from political pressure or control by the host country and to ensure the unhampered performance of their functions.

In ***Holy See v. Rosario, Jr.*** involved an action for annulment of sale of land against the Holy See, as represented by the Papal Nuncio. The Court upheld the petitioner's defense of sovereign immunity. It ruled that where a diplomatic envoy is granted immunity from the civil and administrative jurisdiction of the receiving state over any real action relating to private immovable property situated in the territory of the receiving state, which the envoy holds on behalf of the sending state for the purposes of the mission, with all the more reason should immunity be recognized as regards the sovereign itself, which in that case is the Holy See.

In ***Lasco vs. United Nations***, the United Nations Revolving Fund for Natural Resources Exploration was sued before the NLRC for illegal dismissal. The Court again upheld the doctrine of diplomatic immunity invoked by the Fund.

Finally, ***DFA v. NLRC*** involved an illegal dismissal case filed against the Asian Development Bank. Pursuant to its Charter and the Headquarters Agreement, the diplomatic immunity of the Asian Development Bank was recognized by the Court.

It bears to stress that all of these cases pertain to the diplomatic immunity enjoyed by international organizations. Petitioner asserts that he is entitled to the same diplomatic immunity and he cannot be prosecuted for acts allegedly done in the exercise of his official functions.

The term "international organizations" -

"is generally used to describe an organization set up by agreement between two or more states. Under contemporary international law, such organizations are endowed with some degree of international legal personality such that they are capable of exercising specific rights, duties and powers. They are organized mainly as a means for conducting general international business in which the member states have an interest."^[11]

International public officials have been defined as: