

SECOND DIVISION

[G.R. No. 139680, April 12, 2000]

**WILLIAM R. BAYANI, PETITIONER, VS. PANAY ELECTRIC CO.,
INC., RESPONDENT.**

R E S O L U T I O N

QUISUMBING, J.:

This is a petition for certiorari of the decision^[1] dated October 26, 1998, of the Court of Appeals in CA-G.R. SP No. 46012, which set aside the orders of the Regional Trial Court of Iloilo City, Branch 34, in Civil Case No. 23276, for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts of the case are as follows:

In March 1996, private respondent, Panay Electric Company, Inc. (PECO), discontinued supplying electrical services to two pension houses the Bayani Drive Inn at Calumpang, Molo, Iloilo City and the William Bayani Hotel in Mandurriao, Iloilo City, both owned by petitioner. Alleging that it had discovered theft of electricity in petitioner's business establishments, PECO filed two complaints for violation of R.A. No. 7832^[2] against petitioner with the City Prosecutor of Iloilo City. The City Prosecutor dismissed the complaints on August 8, 1996 and August 19, 1996, respectively. PECO appealed the dismissal to the Secretary of Justice.

On October 10, 1996, petitioner filed Civil Case No. 23276 with the Regional Trial Court, Iloilo City, for injunction and damages arising from malicious prosecution. PECO moved to dismiss the petition. Pending resolution of the motion to dismiss, petitioner, on January 20, 1997, amended his complaint to add a prayer for writ of preliminary prohibitory injunction to make PECO desist from making "false imputations that plaintiff allegedly continued to commit violations" of R.A. No. 7832. ^[3] PECO filed a motion to dismiss the amended complaint, but said motion was denied by the trial court in its order dated March 20, 1997. The court also denied its motion for reconsideration on August 27, 1997.

On September 2, 1997, the trial court granted petitioner's request for the issuance of a writ of preliminary mandatory injunction as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING, let a Writ of Preliminary Mandatory Injunction issue after the plaintiff puts up a bond in the amount of Three Hundred Thousand Pesos (P300,000.00). Upon the filing of the Injunctive Bond by the plaintiff and approval of the same by the Court, the Defendant is ordered to immediately restore the electric services to the Bayani Drive Inn, Calumpang, Molo, Iloilo City and the William Bayani Hotel at Mandurriao, Iloilo City.

"SO ORDERED."^[4]

Petitioner initially submitted a surety bond but later substituted a cashier's check for the surety. The trial court approved the substitution on September 10, 1997.

On September 15, 1997, PECO filed its answer with counterclaim for damages for alleged injuries done to its good name and business standing.

On November 17, 1997, PECO filed a petition, CA-G.R. SP No. 46012, for certiorari and prohibition with the Court of Appeals, praying that the appellate court declare the orders of the trial court dated March 20, 1997, August 27, 1997, September 2, 1997 and September 10, 1997 null and void. PECO likewise sought the dismissal of herein petitioner's complaint in the lower court.

The Secretary of Justice upheld the dismissal of the complaints for violations of R.A. No. 7832, on March 4, 1998.

On October 26, 1998, respondent appellate court disposed of the petition, CA-G.R. SP No. 46012, as follows:

"WHEREFORE, premises considered, the assailed orders of the public respondent dated 20 March 1997, 27 August 1997, 2 September 1997 and 10 September 1997, respectively, are hereby SET ASIDE and the complaint for injunction and damages filed by private respondent against petitioner is hereby ordered DISMISSED for lack of merit.

"SO ORDERED."^[5]

On November 12, 1998, petitioner moved for reconsideration, which the appellate court denied in its resolution dated July 15, 1999.

Hence, the instant petition for review before us, with petitioner raising the following issues:

- I Whether or not the Court of Appeals erred in dismissing Civil Case No. 23276 filed by petitioner against respondent in ruling that said case is based on malicious prosecution, the element of final termination of the action resulting in acquittal is absent and therefore premature?
- II Whether or not the Court of Appeals erred in ruling that the Regional Trial Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the orders appealed from, as well as the subsequent orders dated 2 September 1997 and 10 September 1997 granting the issuance of a writ of Preliminary Mandatory Injunction and admitting the cashier's check in the amount of P300,000.00 as substitute for the surety bond earlier submitted as injunctive bond?
- III. Whether or not the Court of Appeals erred in ruling that the period to assail the order denying the motion to dismiss filed by respondent has long expired so the latter has already lost the right to question the same and had already