

SECOND DIVISION

[G.R. No. 127162, June 05, 1998]

**JOSE ABACA, PETITIONER, VS. HONORABLE COURT OF APPEALS,
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

MARTINEZ J.:

Petitioner Jose Abaca was tried before the Regional Trial Court of Calapan, Oriental Mindoro, for the crime of illegal recruitment under Article 38 and 39 of Presidential Decree No. 442, based on an Information which reads:

"That in the month of November 1988, and for a period prior and/or subsequent thereto, in the Municipality of Calapan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused thru false manifestation and fraudulent representation made to ROSELIA JIZ JANE0, ZENAIDA J. SUBANG, RENITA J. JANE0 and MELROSE S. PALOMO to the effect that he has the authority to recruit workers for employment in Taipei, Taiwan, and can facilitate the processing of their necessary papers in connection therewith if given the necessary amount of money to cover the costs of such recruitment and by means of other similar deceit when in truth and in fact he is not authorized nor licensed to recruit, did then and there willfully and unlawfully, and feloniously collect from the aforesated applicants the aggregate amount of FOURTEEN THOUSAND PESOS (P 14,000.00), Philippine Currency, the said accused assuring and representing that the same would be used in defraying the necessary expenses of the complainants' application for employment abroad and having been convinced by said misrepresentation the complainants gave the said amount to the herein accused, but the latter far from complying with his obligations, misappropriated and converted to his own personal use and benefit the aforesated amount, to the damage and prejudice of the said ROSELIA JIZ JANE0, ZENAIDA J. SUBANG, RENITA J. JANE0 and MELROSE S. PALOMO.

Contrary to Articles 38 and 39 of Presidential Decree No. 442, as amended otherwise known as the Labor Code of the Philippines."^[1]

Arraigned on February 6, 1990, petitioner entered a plea of not guilty. Thereafter, trial ensued.

The prosecution's evidence, as summarized by the trial court, reads as follows:

"The gist of the testimonies of the four complainants revolves on how the accused (petitioner herein) recruited them to work abroad and made them believe that the accused could work out their papers in consideration of a certain sum of money. Specifically, the four

complainants similarly testified that the accused was introduced to them by his brothers, Perferio and Guding Abaca, whom they already knew for a long time. Sometime in the month of November 1988, the accused, accompanied by his brothers, misrepresented himself to be a licensed recruiter and convinced the four complainants that for a consideration they could work abroad at Taipei either as a domestic helper or factory worker with a salary ranging from \$300 to \$500 a month. The accused asked the sum of P14,000.00 each, but the complainants requested if they could pay P6,000.00 first and before departure they will complete the amount as demanded. Thus, the complainants paid partial amount at the office of the accused at Five Ace Philippines located in Manila and all of them gave their own down payment. Each complainant paid the accused P1,500.00 allegedly to be used for the processing of the passport and the following amounts for processing x x x

'All the complainants were able to receive the passport from the accused.

'From the foregoing, the complainants were able to pay the accused the aggregate amount of P14,000.00, excluding the amount of P1,500.00 each for the passport.

'It was agreed between the complainant and the accused that the balance of their obligation would be given on or before they leave for abroad. But since their payment, the accused promised them to leave, first, on or before December, 1988 and then anytime in January of 1989, and then later. When the complainants sensed that they would not leave anymore, they informed the brothers of the accused whom they are familiar with, complaining about the failure of the accused to send them abroad when they have already paid the advance payment. The two brothers could not do otherwise but appeased them and promised to contact their brother, the accused herein. Finally, the complainants were able to confront the accused and demanded the return of their money, but the accused merely promised to do so, until such time that they already filed their complaint with the NBI."

On the other hand, petitioner's version of the case is likewise capsulized by the trial court in this wise, viz:

"In trying to absolve himself from criminal liability, the accused shifted the blame to a certain Mr. Reynaldo Tan to whom he alleges to have remitted the sums of money he received from the complainants. To corroborate his version of the incident, the accused presented one Alberto Tolentino, an employee of the Department of Public Works and Highways who also was recruited by Mr. Abaca and who was also referred to Mr. Reynaldo Tan.

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When asked if he recruited complainants as they testified in Court, the accused denied the truth of such statement. The accused stated that he did not recruit them and the truth was he happened to be at the establishment of complainants in Calapan and they were able to talk with the Janeo sisters who told them of their problems wherein they were notified to vacate the establishment, and thus asked the accused to

assist them in going abroad. The accused told them that they were recruiting workers in the Middle East but he is discouraging female to work there because of the horrible experiences others have undergone. The accused also told them that he was referring them to somebody whom he knows are sending people to Taipei in the person of Mr. Reynaldo Tan. The complainants agreed, after which the accused left for Manila where he was working. Then, one morning, the two girls in the name of Melrose Paloma and Zenaida Subang called the accused by phone and told him that they are interested in joining the Janeo sister to go to Taipei and they said that they came across the calling card of the accused marked as Exhibit "G". He admitted that the Five Ace Philippines is only engaged in trading and not as recruitment agency. He informed the Court that he was connected with the recruitment agency called WORK Incorporated-a licensed company."

After trial, judgment was rendered finding petitioner guilty of the crime charged, the dispositive portion of which reads:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of illegal recruitment under Art. 39 (c) of P.D. 442, he is hereby sentenced to suffer imprisonment of four (4) years straight and to indemnify the complainants the aggregate amount of P14, 000.00 by way of civil liability, with the legal rate of interest from 1988 up to the time of payment.

SO ORDERED."

On appeal, the respondent Court of Appeals affirmed with modification the decision of the trial court. It found petitioner guilty of illegal recruitment on a large-scale and sentenced him to life imprisonment and a fine of P100,000.00.^[2]

Petitioner moved for reconsideration but the same was denied on November 7, 1996.^[3]

Petitioner now comes to us alleging that the respondent court committed grave and reversible errors of law and/or acted with grave abuse of discretion-

1. In not considering the certification (Exh. 1) issued by the POEA stating, among others, that WORK, Inc. was a duly licensed private recruitment agency prior to August 20,1989, and that petitioner was then a manager and PDOS (Pre-Departure Orientation Seminar) Trainor in said recruitment agency, and that, therefore, by virtue of his position as manager and PDOS trainor of WORK, Inc. , he had the authority to undertake recruitment activities.
2. In not finding that petitioner, being a holder of authority, may not be validly charged of illegal recruitment as defined by law in force at the time of the alleged commission of the offense charged, much less, convicted and sentenced to life imprisonment.
3. In declaring petitioner guilty of illegal recruitment in large scale and sentencing him to a penalty of life imprisonment and to pay a fine of P100,000.00

4. In finding that herein petitioner undertook recruitment activities, there being a grave misapprehension of the facts.

The petition must be dismissed.

The crime of illegal recruitment is committed when two elements concur, namely: (1) the offender has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and (2) he undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any prohibited practices enumerated under Article 34 of the Labor Code. [4]

Under the first element, a *nonlicensee* or *nonholder of authority* is any person, corporation or entity which has not been issued a valid license or authority to engage in recruitment and placement by the Secretary of Labor, or whose license or authority has been suspended, revoked or canceled by the Philippine Overseas Employment Administration (POEA) or the Secretary.[5] Agents or representatives appointed by a licensee or a holder of authority but whose appointments are not previously authorized by POEA are within the meaning of the term *nonlicensee* or *nonholder of authority*. [6]

The record shows that petitioner is not a licensed recruiter as evidenced by the Certification [7] issued by Mr. Hermogenes C. Mateo, Chief of the Licensing Branch, POEA. Testifying on the aforesaid certification, Mr. Mateo said:

"Q Now, how about a person by the name of Jose Abaca alias "Joe" or Jose "Joe" Abaca listed in that particular list as one among those authorized by the Philippine Overseas Employment Administration to recruit workers for employment abroad?

A He is not included among those authorized to recruit in their personal capacity like single proprietorship, sir." [8]

Petitioner's theory that he has the authority to recruit by reason of his position as manager and Pre-Departure Orientation Seminar Trainor (PDOS) of the WORKERS FOR OVERSEAS RECRUITMENT KEY CENTER, INC. (WORK, Inc.), a licensed private recruitment agency is devoid of merit. The Certification [9] issued by Mr. Mateo, which was relied upon by petitioner is nothing but an affirmation that he is an officer of WORK, Inc. It does not, in any way, prove that petitioner has a license or authority to undertake recruitment activities. Moreover, his employment with a licensed placement agency does not *ipso facto* authorize him to recruit workers. This was clarified by Mr. Mateo when he testified that:

"Q Now, will you please tell this Court if the employees of WORK, Incorporated in particular or any agency for that matter which are license to recruit workers for overseas employment authorized or licensed to recruit workers for employment abroad?

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A That will depend on the designation of the person concerned, sir.

FISCAL SENOREN:

Q What do you mean by it depends upon the designation of a person?

A Well, if the designation states for example that he is only authorized to market for overseas principal, that is the only function that he could do so in representing the company. For example, if he is trainor, it so states that he is authorized to serve as trainor in the conduct of pre-departure orientation seminar, sir.

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Q When a person is trainor or only a personnel manager, do you mean to say that he cannot recruit for his agency?

A As far as the POEA is concerned, we only recognize the appointment submitted to our office in his capacity as that, Your Honor." [10]

Even assuming that WORK, Inc. had authorized petitioner, by reason of his position in the company, to recruit workers, still, such authority was not previously approved by the POEA. [11]

Again, Mr. Mateo explained that a licensee or holder of authority may authorize their employees to recruit for the agency. However, said authority must be submitted to and approved by the POEA. [12] The provision of Article 29 of the Labor Code is very clear on this:

"Art. 29. *Non-transferability of license or authority.*- No license or authority shall be used directly or indirectly by any person other than the one in whose favor it was issued or at any place other than stated in the license or authority, nor may such license or authority be transferred, conveyed or assigned to any other person or entity. Any transfer of business address, appointment or designation of any agent or representative including the establishment of additional officers anywhere shall be subject to the prior approval of the Department of Labor."
(Underlining Ours)

Moreover, there is nothing from the record which would show even by implication that petitioner was acting for and in behalf of WORK, Inc. when he was dealing with the complainants. Petitioner gave his calling card [13] and met with private complainants at his office at Five Ace, Phil., Malate, City of Manila.

Thus, complainant Roselia Janeo testified:

"Q Where did you give the amount of P 1,500.00 for your passport?

A I give (sic) the amount of P1,500.00 to Jose Abaca in Manila because he instructed us to follow him in Manila.

Q Where in Manila did you give that P1,500.00?

A At Five Ace Philippines and this Five Ace Philippines is the agency which according to Jose Abaca he is handling" [14]

Complainant Reneta Janeo also testified: