336 Phil. 949

FIRST DIVISION

[G.R. No. 107019, March 20, 1997]

FRANKLIN M. DRILON, AURELIO C. TRAMPE, GREGORIO A. ARIZALA,CESAR M. SOLIS AND FERDINAND R. ABESAMIS, PETITIONERS, VS. COURT OF APPEALS, HON. GEORGE C. MACLI-ING, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 100 OF THE REGIONAL TRIAL COURT OF QUEZON CITY, AND HOMOBONO ADAZA, RESPONDENTS.

D E C I S I O N

HERMOSISIMA, JR., J.:

Petitioners seek the reversal of the Resolutions of respondent Court of Appeals in CA-G.R. SP No. 25080 dated January 31, 1992 and September 2, 1992 affirming the Orders, dated February 8, 1991 and May 14, 1991, of respondent Judge George C. Macli-ing which denied herein petitioner's Motion to Dismiss the complaint filed in Civil Case No. Q-90-6073 by respondent Homobono Adaza.

The facts are not in dispute.

In a letter-complaint to then Secretary of Justice Franklin Drilon[1] dated March 20, 1990, General Renato de Villa,[2] who was then the Chief of Staff of the Armed Forces of the Philippines, requested the Department of Justice to order the investigation of several individuals named therein, including herein private respondent Homobono Adaza, for their alleged participation in the failed December 1989 coup d'etat. The letter-complaint was based on the affidavit of Brigadier General Alejandro Galido, Captain Oscarlito Mapalo, Colonel Juan Mamorno, Colonel Hernani Figueroa and Major Eduardo Sebastian.

Gen. de Villa's letter-complaint with its annexes was referred for preliminary inquiry to the Special Composite Team of Prosecutors created pursuant to Department of Justice Order No. 5 dated January 10, 1990. Petitioner then Assistant Chief State Prosecutor Aurelio Trampe,[3] the Team Leader, finding sufficient basis to continue the inquiry, issued a subpoena to the individuals named in the letter-complaint, Adaza included, and assigned the case for preliminary investigation to a panel of investigators composed of prosecutors George Arizala, as Chairman, and Ferdinand Abesamis and Cesar Solis as members. The case was docketed as I.S. No. DOJ-SC-90-013.

On April 17, 1990, the panel released its findings, thru a Resolution, which reads:

"PREMISES CONSIDERED, we find and so hold that there is probable cause to hold herein respondents for trial for the crime of REBELLION WITH MURDER AND FRUSTRATED MURDER. Hence we respectfully recommend the filing of the corresponding information against them in court."[4]

The above Resolution became the basis for the filing of an Information,[5] dated April 18, 1990, charging private respondent with the crime of rebellion with murder and frustrated murder before the Regional Trial Court of Quezon City, with no recommendation as to bail.[6]

Feeling aggrieved by the institution of these proceedings against him, private respondent Adaza filed a complaint for damages,[7]dated July 11, 1990, before Branch 100 of the Regional Trial Court of Quezon City. The complaint was docketed as Civil Case No. Q-90-6073 entitled, "Homobono Adaza, plaintiff versus Franklin Drilon, et al., respondents." In his complaint, Adaza charged petitioners with engaging in a deliberate, willful and malicious experimentation by filing against him a charge of rebellion complexed with murder and frustrated murder when petitioners, according to Adaza, were fully aware of the non-existence of such crime in the statute books.

On October 15, 1990, petitioners filed a Motion to Dismiss Adaza's complaint on the ground that said complaint states no actionable wrong constituting a valid cause of action against petitioners.

On February 8, 1991, public respondent judge issued an Order[8]denying petitioners' Motion to Dismiss. In the same Order, petitioners were required to file their answer to the complaint within fifteen (15) days from receipt of the Order.

Petitioners moved for a reconsideration of the Order of denial, but the same was likewise denied by respondent Judge in another Order dated May 14, 1991.[9] The subsequent Order reiterated that petitioners file their responsive pleading within the prescribed reglementary period.

Instead of filing their answer as ordered, petitioners filed on June 5, 1991 a petition for certiorari under Rule 65 before the Court of Appeals, docketed as CA-G.R. No. 25080, alleging grave abuse of discretion on the part of the respondent Judge in ruling that sufficient cause of action exists to warrant a full-blown hearing of the case filed by Adaza and thus denying petitioners' Motion to Dismiss.

In its Resolution promulgated on January 31, 1992, the appellate court dismissed the petition for lack of merit and ordered respondent Judge to proceed with the trial of Civil Case No. Q-90-6073.[10] A Motion for Reconsideration having been subsequently filed on February 28, 1992, the court a quo denied the same in a Resolution dated September 2, 1992.[11]

Hence, this petition, dated October 9, 1992, pleading this Court to exercise its power of review under Rule 45 of the Revised Rules of Court.

On January 13, 1993, however, this Court, thru the Second Division, dismissed the petition for failure to comply with Revised Circular No. 1-88, particularly the requirement on the payment of the prescribed docketing fees.[12]

On March 8, 1993,[13] we reinstated the petition and required the respondents to comment on the aforesaid petition. In the same Resolution, a temporary restraining

order was issued by this Court enjoining respondent Judge from further proceeding with Civil Case No. Q-90-6073 until further orders from this Court.

The petition has merit.

In his Comment,[14] dated March 23, 1993, respondent Adaza maintains that his claim before the trial court was merely a suit for damages based on tort by reason of petitioners' various malfeasance, misfeasance and nonfeasance in office, as well as for violation by the petitioners of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. It was not a suit for malicious prosecution.

Private respondent is taking us for a ride. A cursory perusal of the complaint filed by Adaza before respondent Judge George Macli-ing reveals that it is one for malicious prosecution against the petitioners for the latter's filing of the charge against him of rebellion with murder and frustrated murder. An examination of the records would show that this latest posture as to the nature of his cause of action is only being raised for the first time on appeal. Nowhere in his complaint filed with the trial court did respondent Adaza allege that his action is one based on tort or on Section 3 (e) of Republic Act No. 3019. Such a change of theory cannot be allowed. When a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[15] Any member of the Bar, even if not too schooled in the art of litigation, would easily discern that Adaza's complaint is no doubt a suit for damages for malicious prosecution against the herein petitioners. Unfortunately, however, his complaint filed with the trial court suffers from a fatal infirmity -- that of failure to state a cause of action -- and should have been dismissed right from the start. We shall show why.

The term malicious prosecution has been defined in various ways. In American jurisdiction, it is defined as:

> "One begun in malice without probable cause to believe the charges can be sustained (Eustace v. Dechter, 28 Cal. App. 2d. 706,83 P. 2d. 525). Instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted. For this injury an action on the case lies, called the action of malicious prosecution (Hicks v. Brantley, 29 S.E. 459, 102 Ga. 264; Eggett v. Allen, 96 N.W. 803, 119 Wis. 625)."[16]

In Philippine jurisdiction, it has been defined as:

"An action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. The gist of the action is the putting of legal process in force, regularly, for the mere purpose of vexation or injury (Cabasaan v. Anota, 14169-R, November 19, 1956)."[17]

The statutory basis for a civil action for damages for malicious prosecution are found in the provisions of the New Civil Code on Human Relations and on damages

particularly Articles 19, 20, 21, 26, 29, 32, 33, 35, 2217 and 2219 (8).[18] To constitute malicious prosecution, however, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately by the defendant knowing that his charges were false and groundless. Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution.[19]Thus, in order for a malicious prosecution suit to prosper, the plaintiff must prove three (3) elements: (1) the fact of the prosecution and the further fact that the defendant was himself the prosecutor and that the action finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) that the prosecutor was actuated or impelled by legal malice, that is by improper or sinister motive.[20] All these requisites must concur.

Judging from the face of the complaint itself filed by Adaza against the herein petitioners, none of the foregoing requisites have been alleged therein, thus rendering the complaint dismissible on the ground of failure to state a cause of action under Section 1 (g), Rule 16 of the Revised Rules of Court.

There is nothing in the records which shows, and the complaint does not allege, that Criminal Case No. Q-90-11855, filed by the petitioners against respondent Adaza for Rebellion with Murder and Frustrated Murder, has been finally terminated and therein accused Adaza acquitted of the charge. Not even Adaza himself, thru counsel, makes any positive asseveration on this aspect that would establish his acquittal. Insofar as Criminal Case No. Q-90-11855 is concerned, what appears clear from the records only is that respondent has been discharged on a writ of habeas corpus and granted bail.[21] This is not, however, considered the termination of the action contemplated under Philippine jurisdiction to warrant the institution of a malicious prosecution suit against those responsible for the filing of the informaion against him.

The complaint likewise does not make any allegation that the prosecution acted without probable cause in filing the criminal information dated April 18, 1990 for rebellion with murder and frustrated murder. Elementarily defined, probable cause is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It is well-settled that one cannot be held liable for maliciously instituting a prosecution where one has acted with probable cause. Elsewise stated, a suit for malicious prosecution will lie only in cases where a legal prosecution has been carried on without probable cause. The reason for this rule is that it would be a very great discouragement to public justice, if prosecutors, who had tolerable ground of suspicion, were liable to be sued at law when their indictment miscarried.[22]

In the case under consideration, the decision of the Special Team of Prosecutors to file the information for rebellion with murder and frustrated murder against respondent Adaza, among others, cannot be dismissed as the mere product of whim or caprice on the part of the prosecutors who conducted the preliminary investigation. Said decision was fully justified in an eighteen (18)-page Resolution dated April 17, 1990.[23] While it is true that the petitioners were fully aware of the prevailing jurisprudence enunciated in People v. Hernandez,[24] which proscribes the