SUPREME COURT
SECOND DIVISION

MARIO C.V. JALANDONI,
***Petitioner*,**

-versus-

G.R. Nos. 115239-40
March 2, 2000

HON. SECRETARY OF JUSTICE FRANKLIN M. DRILON, HONORABLE PROVINCIAL PROSECUTOR OF RIZAL, ROBERT COYIUTO, JR., JAIME LEDESMA, RAMON GARCIA, ANTONIO OZAETA, AMPARO BARCELON and CARLOS DYHONGPO,
***Respondents*.**
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D E C I S I O N

BUENA, *J.*:

This is a Petition for *Certiorari* seeking to Nullify and Set Aside the Orders of the Honorable Secretary of Justice Franklin M. Drilon, to wit: DOJ Resolution No. 211 Series of 1994 dated March 15, 1994 and the letter-order dated April 20, 1994. DOJ Resolution No. 211 Series of 1994 instructed the Provincial Prosecution of Rizal to withdraw the informations in I.S. Nos. 93-6228 and 93-6422 while the letter-order

denied the motion for reconsideration filed by herein petitioner Mario C.V. Jalandoni.

The antecedent facts of the case are as follows:

(a) In I.S. No. 93-6228

On July 15, 1992, Jaime Ledesma, private respondent herein, filed an administrative complaint for violation of the Revised Penal Code and the Anti-Graft and Corrupt Practices Act against the petitioner with the Presidential Commission on Good Government (PCGG).

On the two succeeding days, July 16 and July 17, 1992, news articles thereon appeared in various daily newspapers.[1]

A full-page paid advertisement was caused to be published on July 16, 1992 by private respondents Robert Coyiuto, Jr., Jaime Ledesma, Ramon Garcia, Amparo Barcelon, Antonio Ozaeta, and Carlos Dyhongpo. The advertisements were published in five (5) major daily newspapers, to wit:

1. The Manila Chronicle
2. Business World
3. Malaya
4. Philippine Daily Globe, and
5. The Manila Times

Exactly a year thereafter or on July 16, 1993, petitioner Jalandoni filed a complaint for the crime of libel before the Provincial Prosecutor of Rizal designated as I.S. No. 93-6228 against officials/directors of Oriental Petroleum & Minerals Corporation (OPMC, for brevity), namely, Coyiuto, Jr., Ledesma, Garcia, Barcelon, Ozaeta, and Dyhongpo.

The publication in question was the July 16, 1992 full-page advertisements simultaneously published in five major dailies. These advertisements contained allegations naming herein petitioner who was then a PCGG Commissioner of having committed illegal and unauthorized acts, and other wrongdoings constituting graft and corruption, relative to the *dacion en pago* financing arrangement

entered into by Piedras Petroleum Co., Inc. with Rizal Commercial Banking Corporation.

Quoted in full below is the said advertisement:

> "My administration will prove that government is not avoidly corrupt — and that bureaucracy is not necessarily corrupt. Graft and corruption, we will confront more with action than with words.'
>
> — PRESIDENT FIDEL V. RAMOS, Inaugural Address, June 30, 1992
>
> "AN URGENT APPEAL TO JUSTICE SECRETARY FRANKLIN DRILON (and) PCGG CHAIRMAN MAGTANGGOL GUNIGUNDO
>
> "Please stop the unauthorized and illegal acts of PCGG officials led by former Chairman DAVID CASTRO and Commissioner MARIO JALANDONI which will allow the attempt of hostile vested interest groups to gain entry into the board of Oriental Petroleum & Minerals Corporation.
>
> "1. The PCGG openly defied Malacañang orders issued by former Executive Secretary Franklin Drilon on the sale of Oriental Petroleum shares.
>
> "In spite of its claims that the disposal of OPMC shares held by Piedras Petroleum was approved by the Office of the President, documented proofs belie the PCGG's statements.
>
> "No less than Justice Secretary Franklin Drilon, who was Executive Secretary at the time PCGG Chairman David Castro sought approval for the OPMC-Piedras Petroleum deal, thumbed down Castro's request. Clearly, the sale of OPMC shares held by Piedras Petroleum to the RCBC-Yuchengco Group for P101 million was unauthorized and illegal.

"2. The PCGG officials involved in the unauthorized and illegal sale of Oriental Petroleum shares committed grave abuse of authority. Their acts defrauded government of better prices for Oriental Petroleum shares which they undervalued and sold to favored buyers — Pacific Basin and RCBC, both identified with the Yuchengco group.

"At the time the Piedras deal was closed the PCGG as evidenced by the minutes of the Board Meeting of Piedras Petroleum on October 31, 1991, with PCGG Commissioner Mario Jalandoni as acting Chairman, the sale of 2.054 billion OPMC Class A shares and 789.45 million B shares, OPMC shares were sold for the give-away price of P0.035/share. This compares with prevailing market price of P0.042 for A shares and P0.049 for the B shares. This means that the RCBC-Yuchengco Group already earned P25 million at the time of the transaction.

"3. The PCGG proceeded without any legal authority to sell Oriental Petroleum shares in total violation of the Public Bidding Law and other government rules and regulations pertaining to the disposal of government assets.

"The PCGG, particularly Commissioner Mario Jalandoni, should be made to account for the PCGG-Piedras-RCBC transaction as it was consummated without transparency, in violation of the Public Bidding Law and without approval from the government.

"4. The PCGG last year illegally used Philcomsat cash dividends to avail itself of an OPMC stock subscription to pay for the subscription rights of JY Campos and Piedras Petroleum.

"Even before the PCGG transacted the questionable Piedras-RCBC deal, it was sued by a Philcomsat

stockholder before the Sandiganbayan for diverting P76 million in cash dividends. The anti-graft court ordered the cash dividends deposited in an escrow account in 1989. However, the funds were used by the PCGG to pay for subscription rights for OPMC shares.

"This case is related to the Piedras deal because the additional OPMC shares were part of those sold to the RCBC-Yuchengco Group.

"5. The PCGG diverted the proceeds on the authorized sale of Oriental Petroleum shares in violation of the law requiring proceeds of the sale of assets by the PCGG going to the Comprehensive Agrarian Reform Program (CARP).

"In addition to the litany of illegal transactions entered into by the PCGG, the officials of the anti-graft body also violated provisions of the Comprehensive Agrarian Reform Law of 1988, specifically Section 63, which states that 'the following shall serve as source of funding or appropriations for the implementation of the said law;

"b) All receipts from assets recovered and sales of ill-gotten wealth recovered through the Presidential Commission on Good Government."'

"The Management & Board of Directors of Oriental Petroleum and Minerals Corporation believe that the fruits of oil exploration and development in the country must be shared by the largest possible number of Filipinos. It urgently seeks the intervention of the National Leadership to immediately step in and prevent a large-scale take-over attempt on the Company by selfish and hostile vested interest groups under highly-questionable, unauthorized and illegal circumstances."[2]

(b) In I.S. No. 93-6422

On July 22, 1993, petitioner filed a complaint for libel before the Provincial Prosecutor of Rizal designated as I.S No. 93-6422 against then OPMC Chairman and President, private respondent Robert Coyiuto, Jr.

An open letter dated August 14, 1992 addressed to the stockholders of OPMC is the subject of this case. Coyiuto, Jr., wrote it in his capacity as Chairman of the Board and President of OPMC. The paragraph objected to is quoted hereunder:

> "Conclusion
>
> "It has been suggested that this barrage of charges and press releases against the Corporation, and myself, were really intended to create a smokescreen to cover up the sweetheart deal between Commissioner Mario Jalandoni of the Presidential Commission on Good Government (PCGG) and Rizal Commercial Banking Corp. (RCBC) to the prejudice of the Government and/or that it is a part of a dubious proxy solicitation strategy by these persons. It seems to me that there is more to that transaction than meets the eye."[3]

After the affidavits and counter-affidavits were filed, 3rd Assistant Prosecutor Edgardo C. Bautista issued a Memorandum dated November 26, 1993 in I.S. No. 93-6228, approved by Rizal Provincial Prosecutor Mauro M. Castro on December 13, 1993, recommending the indictment of private respondents Coyiuto. Jr., Ledesma, Garcia, Ozaeta, Barcelon and Dyhongpo in complicity in the crime of libel.[4] An information for the crime of libel docketed as Criminal Case No. 93-10987 was filed with the Regional Trial Court of Makati, Branch 138.

A Memorandum in I.S. No. 93-6422 dated November 8, 1993 was issued by 3rd Assistant Prosecutor Bautista, approved by Rizal Provincial Prosecutor Mauro M. Castro on December 13, 1993, recommending the indictment of private respondent Coyiuto, Jr.[5] An Information for libel docketed as Criminal Case No. 93-10986 was filed thereafter with the Regional Trial Court of Makati, Branch 137.

All of the respondents in the two aforementioned cases appealed to then Secretary of Justice, Franklin M. Drilon.[6]

On March 15, 1994, Secretary Drilon issued the questioned DOJ Resolution No. 211, Series of 1994.[7] The dispositive portion thereof reads as follows:

> "WHEREFORE, premises considered, the questioned resolutions are hereby SET ASIDE and the complaints DISMISSED. You are hereby directed to immediately withdraw the informations filed in court against respondents Robert Coyiuto, Jr., Jaime L. Ledesma, Ramon Garcia, Amparo Barcelon, Antonio Ozaeta and Carlos Dyhongpo. Report of action taken within ten (10) days from receipt hereof is desired."[8]

A Motion for Reconsideration[9] was filed but the same was denied in a letter-order dated April 20, 1994.[10]

Hence this petition.

The petition is without merit.

Section 4, Rule 112 of the New Rules on Criminal Procedure ruled that:

> "SECTION 4. Duty of investigating fiscal. — If the investigating fiscal finds cause to hold the respondent for trial, he shall prepare the resolution and corresponding information. He shall certify under oath that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend dismissal of the case.

"In either case, he shall forward the records of the case to the provincial or city fiscal or chief state prosecutor within five (5) days from his resolution. The latter shall take appropriate action thereon within ten (10) days from receipt thereof, immediately informing the parties of said action.

"No complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor.

"Where the investigating assistant fiscal recommends the dismissal of the case but his findings are reversed by the provincial or city fiscal or chief state prosecutor on the ground that a probable cause exists, the latter may, by himself, file the corresponding information against the respondent or direct any other assistant fiscal or state prosecutor to do so, without conducting another preliminary investigation.

"If upon petition by a proper party, the Secretary of Justice reverses the resolution of the provincial or city fiscal or chief state prosecutor, he shall direct the fiscal concerned to file the corresponding information without conducting another preliminary investigation or to dismiss or move for dismissal of the complaint or information."

Section 1 (d) of P.D. No. 911 likewise empowers the Secretary of Justice, where he finds that no prima facie case exists, to authorize and direct the investigating fiscal concerned of any other fiscal or state prosecutor to cause or move for the dismissal of the case, or, where he finds a prima facie case, to cause the filing of an information in court against the respondent, based on the same sworn statements of evidence submitted, without the necessity of conducting another preliminary investigation.

"The power of supervision and control by the Minister of Justice over the fiscals cannot be denied. As stated in Noblejas vs. Salas, 67 SCRA 47, Section 79 (c) of the Revised Administrative Code defines the extent of a department secretary's power. The power of control therein contemplated "means the power (of

> the department head) to alter, modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." "The power of control implies the right of the President (and, naturally, of his alter ego) to interfere in the exercise of such discretion as may be vested by law in the officers of the national government, as well as to act in lieu of such officers."' For, while it is the duty of the fiscal to prosecute persons who, according to evidence received from the complainant, are shown to be guilty of a crime, the Minister of Justice is likewise bound by his oath of office to protect innocent persons from groundless, false or serious prosecution. He would be committing a serious dereliction of duty if he orders or sanctions the filing of an information based upon a complaint where he is not convinced that the evidence would warrant the filing of the action in court. As he has the power of supervision and control over prosecuting officers, the Minister of Justice has the ultimate power to decide which as between conflicting theories of the complainant and the respondents should be believed."[11]

It is a well-settled rule that the Secretary of Justice has the power to review resolutions or decisions of provincial or city prosecutors or the Chief State Prosecutor upon petition by a proper party. Under the Revised Administrative Code, the secretary of justice exercises the power of direct control and supervision over said prosecutors. He may thus affirm, nullify, reverse or modify their rulings as he may deem fit.

Section 39, Chapter 8, Book IV in relation to Sections 5, 8, and 9, Chapter 2, Title III of the Code gives the secretary of justice supervision and control over the Office of the Chief State Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:

> "(1) Supervision and Control. — Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review,

> approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word 'control' shall encompass supervision and control as defined in this paragraph."

In the case of Ledesma vs. Court of Appeals,[12] it was held that:

> "'Supervision' and 'control' of a department head over his subordinates have been defined in administrative law as follows:
>
> > "'In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.' (Mondano vs. Silvosa, 97 Phil. 143, 148 (1955)
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> "Review as an act of supervision and control by the justice secretary over the fiscals and prosecutors finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency should be corrected by higher administrative authorities, and not directly by courts. As a rule, only after administrative remedies are exhausted may judicial recourse be allowed."

We have taken the liberty to review the "libelous" articles complained of. We however do not find them to be such.

The questioned "conclusion" in the open letter addressed to the stockholders of the OPMC[13] merely stated the insinuations going on about the deal between petitioner Jalandoni, in his capacity as PCGG Commissioner and RCBC and the explanation for the press releases concerning the writer, respondent Coyiuto, Jr. and the OPMC.

In the recent case of Vasquez vs. Court of Appeals, et. al.,[14] we ruled that:

> "The question is whether from the fact that the statements were defamatory, malice can be presumed so that it was incumbent upon petitioner to overcome such presumption. Under Art. 361 of the Revised Penal Code, if the defamatory statement is made against a public official with respect to the discharge of his official duties and functions and the truth of the allegation is shown, the accused will be entitled to an acquittal even though he does not prove that the imputation was published with good motives and for justifiable ends."

Moreover, this Court has ruled in a plethora of cases[15] that in libel cases against public officials, for liability to arise, the alleged defamatory statement must relate to official conduct, even if the defamatory statement is false, unless the public official concerned proves that the statement was made with actual malice, that is, with knowledge that it was false or not. Here petitioner failed to prove actual malice on the part of the private respondents.

Nor are we of the opinion that the same was written to cast aspersion on the good name of the petitioner. In our view, the paid advertisement[16] merely served as a vehicle to inform the stockholders of the going-ons in the business world and only exposed the irregularities surrounding the PCGG and RCBC deal and the parties involved.

The statements embodied in the advertisement and the open letter are protected by the constitutional guarantee of freedom of speech.[17] This carries the right to criticize the action and conduct of a public official. The extent of the exercise of this right has been interpreted and defined in U. S. vs. Bustos[18] which held:

> "The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good. Rising superior to any official or set of officials, to the Chief Executive, to the Legislature, to the Judiciary — to any or all the agencies of Government — public opinion should be the constant source of liberty and democracy."

The extraordinary writ of certiorari is issued only when it is sufficient shown that "any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion."[19]

In the case of Building Care Corporation vs. National Labor Relations Commission,[20] it was held:

> "The sole office of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction, and does not include correction of public respondent's evaluation of the evidence and factual findings based thereon."

Petitioner herein desires that we make a correction of the findings of the Secretary of Justice. This we cannot do for we do not find it needing of any correction.

A special civil action for certiorari will prosper only if a grave abuse of discretion is manifested. And this is defined in the case of Republic vs. Villarama, Jr.[21] which held that for an abuse to be grave the power is exercised in an arbitrary of despotic manner by reason of passion or personal hostility.

This petitioner failed to prove.

Moreover a petition for certiorari, in order to prosper must be based on jurisdictional grounds because, as long as the respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected only by appeal. Even an abuse of discretion is not sufficient by itself to justify the issuance of a writ of certiorari.[22]

The petitioner failed to point out the specific instances where public respondent had committed a grave abuse of discretion when the latter issued the questioned orders. Failing this the petition for certiorari must fall.

Assuming arguendo that the extraordinary writ of certiorari must prosper, we must point out to the petitioner the oft-cited ruling in the case of Crespo vs. Mogul:[23]

> "Once a complaint or information is filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. Trial judges are thus required to make their own assessment of whether the secretary of justice committed grave abuse of discretion in granting or denying the appeal, separately and independently of the prosecution's or the secretary's evaluation that such evidence is insufficient or that no probable cause to hold the accused for trial exists."

It is therefore imperative upon the trial judge to make an assessment of the motion to withdraw before granting or denying the same for he is in the best position to rule on the same.

Finally, we have to make the pronouncement that public respondent was not remiss in his sworn duty to prosecute violators of the law and to keep the innocent from behind bars.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing and De Leon, Jr., *JJ.*, concur.

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[1] Annexes "C", "C-1" to "C-4"; Rollo pp. 39-43.
[2] Annex "A"; Ibid., p. 37.
[3] Annex "K"; Ibid., p. 163.
[4] Annex "F"; Ibid., p. 56.
[5] Annex "L"; Ibid., 165.
[6] Annexes "G" and "M"; Ibid., pp. 64 and 169.
[7] Annex "H"; Ibid., p. 113.
[8] Ibid., p. 128.
[9] Annex "I"; Ibid., p. 129.
[10] Annex "J"; Ibid., p. 159.
[11] Vda. de Jacob vs. Puno, 131 SCRA 144.
[12] 278 SCRA 656.
[13] Annex "K"; Rollo, p. 163.
[14] G.R. No. 118971, promulgated on September 15, 1999.
[15] Lopez vs. Court of Appeals, 145 Phil. 219; Mercado vs. CFI of Rizal, Branch V, 201 Phil. 565; Babst vs. National Intelligence Board, 132 SCRA 316.
[16] Annex "A"; Rollo, p. 37.
[17] Article III; Section 4, 1987 Constitution.
[18] 37 Phil. 731, 740-741.
[19] Rule 65, Section 1, Rules of Court.
[20] 268 SCRA 666.
[21] 278 SCRA 736.
[22] Comendador vs. de Villa, 200 SCRA 80, 98 citing Arula vs. Espino, 28 SCRA 540.
[23] 151 SCRA 462, 467 as cited in the case of Ledesma vs. Court of Appeals, 278 SCRA 656, 682-683.
