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In the more recent case of *People vs. Paragsa*[15] this Court reversed the appealed judgment convicting the accused of rape, and held that he could not be legally convicted of simple seduction "for the same is not warranted by the wording of the information, which did not allege deceit x x x."

WHEREFORE, the decision appealed from is set aside, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio Herrera, JJ.,* concur.

FIRST DIVISION

[G.R. No. L-38649. March 26, 1979]

FACILITIES MANAGEMENT CORPORATION, J. S. DREYER, and J. V. CATUIRA, *petitioners, vs.* **LEONARDO DE LA OSA AND THE HONORABLE COURT OF INDUSTRIAL RELATIONS,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; RIGHT OF FOREIGN CORPORATION NOT DOING BUSINESS IN THE PHILIPPINES TO SEEK REDRESS. — The object of Sections 68 and 69 of the Corporation Law was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. It was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order

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[15] L-44060, July 20, 1978.

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for business from the Philippine, from securing redress in the Philippine courts.

2. **ID.; ID.; LIABILITY OF FOREIGN CORPORATION, NOT ENGAGED IN BUSINESS IN THE PHILIPPINES.** — If a foreign corporation, not engaged in business in the Philippines is not barred from seeking redress from courts in the Philippines, a fortiori, that same corporation cannot claim exemption from being sued in the Philippine courts for acts done against a person or persons in the Philippines.

3. **ID.; ID.; DOING BUSINESS IN THE PHILIPPINES; MANIFESTED BY THE ACT OF RECRUITING LABORERS.** — The act by a non-resident foreign corporation of recruiting Filipino workers for its own use abroad constitutes in the law doing business in the Philippines.

APPEARANCES OF COUNSEL

Sycip Salazar Feliciano & Associates for petitioners.
Benjamin M. Mendoza for respondent Court.

DECISION

MAKASIAR, *J.*:

Petition for review on *certiorari* of the decision of the Court of Industrial Relations, dated February 14, 1972, ordering petitioners herein to pay private respondent Leonardo de la Osa his overtime compensation, as well as his swing shift and graveyard shift premiums at the rate of fifty (50%) per cent of his basic salary (Annex E, p. 31, *rollo*).

The aforesaid decision was based on a report submitted by the Hearing Examiner, CIR (Dagupan City Branch), the pertinent portions of which are quoted hereinbelow:

"In a petition filed on July 1, 1967, Leonardo dela Osa sought his reinstatement with full backwages, as well as the recovery of his overtime compensation, swing shift and graveyard shift differentials. Petitioner alleged that he was employed by respondents as follows: (1) painter with an hourly rate of $1.25 from March, 1964 to November,

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1964, inclusive; (2) houseboy with an hourly rate of $1.26 from December, 1964 to November, 1965, inclusive; (3) houseboy with an hourly rate of $1.33 from December, 1965 to August, 1966, inclusive; and (4) cashier with an hourly rate of $1.40 from August, 1966 to March 27, 1967, inclusive. He further averred that from December, 1965 to August, 1966, inclusive, he rendered overtime services daily, and that this entire period was divided into swing and graveyard shifts to which he was assigned, but he was not paid both overtime and night shift premiums despite his repeated demands from respondents.

"Respondents filed on August 7, 1967 their letter-answer without substantially denying the material allegations of the basic petition but interposed the following special defenses, namely: That respondents Facilities Management Corporation and J. S. Dreyer are domiciled in Wake Island which is beyond the territorial jurisdiction of the Philippine Government; that respondent J. V. Catuira, though an employee of respondent corporation presently stationed in Manila, is without power and authority of legal representation; and that the employment contract between petitioner and respondent corporation carries the approval of the Department of Labor of the Philippines.

"Subsequently on May 3, 1968, respondents filed a motion to dismiss the subject petition on the ground that this Court has no jurisdiction over the instant case, and on May 24, 1968, petitioner interposed an opposition thereto. Said motion was denied by this Court in its Order issued on July 12, 1968 sustaining jurisdiction in accordance with the prevailing doctrine of the Supreme Court in similar cases.

"x x x x x x x x x x x x

"But before we consider and discuss the foregoing issues, let us first ascertain if this Court could acquire jurisdiction over the case at bar, it having been contended by respondents that they are domiciled in Wake Island which is beyond the territorial jurisdiction of the Philippine Government. To this incidental question, it may be stated that while it is true the site of work is identified as Wake Island, it is equally true the place of hire is established in Manila (See Section B, Filipino Employment Contract, Exhibit '1'). Moreover, what is important is the fact that the contract of employment between the parties litigant was shown to have been originally executed and subsequently renewed in Manila, as asserted by petitioner and not denied by respondents. Hence, any dispute arising therefrom should necessarily be determined in the place or venue where it was contracted.

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"x x x x x x x x x

"From the evidence on hand, it has been proven beyond doubt that petitioner was assigned to and performed work in respondent company at night time which consisted of two different schedules, namely, swing shift and graveyard shifts, particularly during his tenure as houseboy for the second period and as cashier. Petitioner's testimony to this effect was not contradicted, much less rebutted, by respondents, as revealed by the records. Since petitioner actually rendered night time services as required by respondents, and considering the physical moral and sociological effects arising from the performance of such nocturnal duties, we think and honestly believe that petitioner should be compensated at least fifty percent (50%) more than his basic wage rate. This night shift premium pay would indeed be at par with the overtime compensation stipulated at one and one-half (1 1/2) times of the straight time rate.

"x x x x x x x x x" (pp. 31-36, *rollo*).

Apropos, before this Court were filed three (3) other cases involving the same petitioner, all of which had been finally disposed of, as follows:

	G.R No.	*Date of Filing*	*Disposition*
1.	L-37117	July 30, 1973	Petition denied for lack of merit on Sept. 13, 1973. Motion for Reconsideration denied for lack of merit, Nov. 20, 1973.
2.	L-38781	June 17, 1974	Petition denied for lack of merit on June 21, 1974.
3.	L-39111-12	Sept. 2, 1974	Case dismissed on Feb. 6, 1976, pursuant to voluntary manifestation of private respondent Inocente R. Riel that his claims had all been settled to his entire satisfaction.

Incidentally, in connection with G.R. No. L-39111-12 (No. 3 above), WE found strong evidence that petitioner therein, which is also the petitioner in the case at bar, "twisted the arm" of

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private respondent, when the latter in his Manifestation dated July 3, 1975, stated:

"3. x x x Furthermore, since petitioner FMC is a foreign corporation domiciled in California, U.S.A. and has never been engaged in business in the Philippines, nor does it have an agent or an office in this country, there exists no valid reason for me to participate in the continuation and/or prosecution of this case" (p. 194, *rollo*).

— as if jurisdiction depends on the will of the parties to a case. At any rate, considering that petitioner paid the claims of private respondent, the case had become moot and academic. Besides, the fact of such payment amounts to an acknowledgment on the part of petitioner of the jurisdiction of the court over it.

WE have also noted that the principal question involved in each of the above-numbered three (3) cases is more or less identical, to wit: Is the mere act by a non-resident foreign corporation of recruiting Filipino workers for its own use abroad, in law doing business in the Philippines?

In the case at bar, which was filed with this Court on June 3, 1974, petitioners presented, *inter alia*, the following issue: "x x x can the CIR validly affirm a judgment against persons domiciled outside and not doing business in the Philippines, and over whom it did not acquire jurisdiction?

While it is true that the issues presented in the decided cases are worded differently from the principal issue raised in the case at bar, the fact remains that they all boil down to one and the same issue, which was aptly formulated and ably resolved by Mr. Justice Ramon C. Fernandez, then with the Court of Appeals and now a member of this Court, in CA-G.R. No. SP-01485-R, later elevated to this Court on appeal by *certiorari* in Case G.R. No. L-37117. In this case, the majority opinion of the Court of Appeals, which was penned by Justice Fernandez and which WE hereby adopt, runs as follows:

"The principal issue presented in this special civil action is whether petitioner has been 'doing business in the Philippines' so that the service of summons upon its agent in the Philippines vested the Court of First Instance of Manila with jurisdiction.

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"From the facts of record, the petitioner may be considered as 'doing business in the Philippines' within the scope of Section 14, Rule 14 of the Rules of Court which provides:

> 'SEC. 14. Service upon private foreign corporations. — If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.'

"Indeed, the petitioner, in compliance with Act 2486 as implemented by Department of Labor Order No. IV dated May 20, 1968 had to appoint Jaime V. Catuira, 1322 A. Mabini, Ermita, Manila 'as agent for FMC with authority to execute Employment Contracts and receive, in behalf of that corporation, legal services from and be bound by processes of the Philippine Courts of Justice, for as long as he remains an employee of FMC' (Annex 'I', *rollo*, p. 56). It is a fact that when the summons for the petitioner was served on Jaime V. Catuira he was still in the employ of the FMC.

"In his motion to dismiss (Annex 'B', p. 19, *Rollo*), petitioner admits that Mr. Catuira represented it in this country 'for the purpose of making arrangements for the approval by the Department of Labor of the employment of Filipinos who are recruited by the Company as its own employees for assignment abroad.' In effect, Mr. Catuira was a liaison officer representing petitioner in the Philippines.

"Under the rules and regulations promulgated by the Board of Investments which took effect Feb. 3, 1969, implementing Rep. Act No. 5455, which took effect Sept. 30, 1968, the phrase 'doing business' has been exemplified with illustrations, among them being as follows:

XXX XXX XXX

> "(f) the performance within the Philippines of any act or combination of acts enumerated in Section 1(1) of the Act shall constitute 'doing business' therein. In particular, 'doing business' includes:
>
> "(1) Soliciting orders, purchases (sales) or service contracts. Concrete and specific solicitations by a foreign firm, not acting independently of the foreign firm, amounting to negotiation or fixing of the terms and conditions of sales or service contracts,

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regardless of whether the contracts are actually reduced to writing, shall constitute doing business even if the enterprise has no office or fixed place of business in the Philippines. x x x

"(2) Appointing a representative or distributor who is domiciled in the Philippines, unless said representative or distributor has an independent status, *i.e.*, it transacts business in its name and for its own account, and not in the name or for the account of the principal.

x x x x x x x x x

"(4) Opening offices, whether called 'liaison' offices, agencies or branches, unless proved otherwise.

x x x x x x x x x

"*(10) Any other act or acts that imply a continuity of* commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, or in the progressive prosecution of, commercial gain or of the purpose and objective of the business organization" *(54 O.G. 53).*

Recently decided by this Court — again thru Mr. Justice Ramon C. Fernandez — which is similar to the case at bar, is G.R. No. L-26809, entitled "*Aetna Casualty & Surety Company*, plaintiff-appellant *versus Pacific Star Line, the Bradman Co., Inc., Manila Port Service and/or Manila Railroad Company, Inc.*, defendants-appellees." The case is an appeal from the decision of the Court of First Instance of Manila, Branch XVI, in its Civil Case No. 53074, entitled "*Aetna Casualty & Surety Company vs. Pacific Star Lines, The Bradman Co., Inc., Manila Port Service and/or Manila Railroad Company, Inc.*" dismissing the complaint on the ground that the plaintiff has no legal capacity to bring the suit.

It appears that on February 11, 1963, Smith Bell & Co. (Philippines), Inc. and Aetna Casualty & Surety Co., Inc., as subrogee, instituted Civil Case No. 53074 in the Court of First Instance of Manila against Pacific Star Line, The Bradman Co., Inc., Manila Port Service and/or Manila Railroad Company, Inc. to recover the amount of US$2,300.00 representing the

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value of stolen and damaged cargo plus litigation expenses and exemplary damages in the amounts of ₱1,000.00 and ₱2,000.00, respectively, with legal interest thereon from the filing of the suit and costs.

After all the defendants had filed their answer, the defendants Manila Port Service and Manila Railroad Company, Inc. amended their answer to allege that the plaintiff, Aetna Casualty & Surety Company, is a foreign corporation not duly licensed to do business in the Philippines and, therefore, without capacity to sue and be sued.

After the parties submitted a partial stipulation of facts and additional documentary evidence, the case was submitted for decision of the trial court, which dismissed the complaint on the ground that the plaintiff insurance company is subject to the requirements of Sections 68 and 69 of Act 1459, as amended, and for its failure to comply therewith, it has no legal capacity to bring suit in this jurisdiction. Plaintiff appealed to this Court.

The main issue involved in the appeal is whether or not the plaintiff-appellant has been doing business in the Philippines, considering the fact that it has no license to transact business in the Philippines as a foreign corporation. WE ruled:

"The object of Sections 68 and 69 of the Corporation Law was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amendable to suit in the local courts. It was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts (*Marshall-Wells Co. vs. Elser & Co.*, 46 Phil. 70, 75).

"In *Mentholatum Co., Inc., et al., vs. Mangaliman, et al.*, this Court rules that:

> 'No general rule or governing principle can be laid down as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it

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was organized or whether it has substantially retired from it and turned it over to another. (*Traction Cos. v. Collectors of Int. Revenue* [C.C.A Ohio], 223 F. 984, 987). The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization (*Griffin v. Implement Dealers' Mut. Fire Ins. Co.*, 241 N.W. 75, 77; *Pauline Oil & Gas Co. v. Mutual Tank Line Co.*, 246 P. 851, 852, 113 Okl. Ill; *Automotive Material Co. vs. American Standard Metal Products Corp.*, 158 N.E. 698, 703, 327 Ill. 367).' 72 Phil. 524, 528-529.

"And in *Eastboard Navigation, Ltd., et al. vs. Juan Ysmael & Co., Inc.*, this Court held:

'(d) While plaintiff is a foreign corporation without license to transact business in the Philippines, it does not follow that it has no capacity to bring the present action. Such license is not necessary because it is not engaged in business in the Philippines. In fact, the transaction herein involved is the first business undertaken by plaintiff in the Philippines, although on a previous occasion plaintiff's vessel was chartered by the National Rice and Corn Corporation to carry rice cargo from abroad to the Philippines. These two isolated transactions do not constitute engaging in business in the Philippines within the purview of Sections 68 and 69 of the Corporation Law so as to bar plaintiff from seeking redress in our courts. (*Marshall-Wells Co. vs. Henry W. Elser & Co.* 49 Phil., 70; *Pacific Vegetable Oil Corporation vs. Angel O. Singson*, G.R. No. L-7917, April 29, 1955). 102 Phil., pp. 1, 18.

"Based on the rulings laid down in the foregoing cases, it cannot be said that the Aetna Casualty & Surety Company is transacting business of insurance in the Philippines for which it must have a license. The Contract of insurance was entered into in New York, U.S.A., and payment was made to the consignee in its New York branch. It appears from the list of cases issued by the Clerk of Court of the Court of First Instance of Manila that all the actions, except two (2) cases filed by Smith, Bell & Co., Inc. against the Aetna Casualty & Surety Company, are claims against the shipper and the arrastre operators just like the case at bar.

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"Consequently, since the appellant Aetna Casualty & Surety Company is not engaged in the business of insurance in the Philippines but is merely collecting a claim assigned to it by the consignee, it is not barred from filing the instant case although it has not secured a license to transact insurance business in the Philippines."

Indeed, if a foreign corporation, not engaged in business in the Philippines, is not barred from seeking redress from courts in the Philippines, *a fortiori*, that same corporation cannot claim exemption from being sued in Philippine courts for acts done against a person or persons in the Philippines.

WHEREFORE, THE PETITION IS HEREBY DENIED WITH COSTS AGAINST THE PETITIONERS.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-43134. March 26, 1979]

CARMELITA E. VEGA, *petitioner, vs.* **WORKMEN'S COMPENSATION COMMISSION and REPUBLIC OF THE PHILIPPINES (Bureau of Public Schools),** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; APPEAL WITHIN REGLEMENTARY PERIOD IS MANDATORY** — The principle that perfection of appeal within the reglementary period is mandatory and jurisdictional, and that failure to do so renders the questioned