Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-48219. February 28, 1979]

MANUEL J. C. REYES, *petitioner*, *vs.* **HON. LEONOR INES-LUCIANO, as Judge of the Juvenile & Domestic Relations Court, Quezon City, COURT OF APPEALS and CELIA ILUSTRE-REYES**, *respondents*.

SYLLABUS

REMEDIAL LAW; PROVISIONAL REMEDIES; SUPPORT *PENDENTE LITE*; ADULTERY AS A DEFENSE IN ACTION FOR SUPPORT MUST BE ESTABLISHED BY COMPETENT EVIDENCE. — Adultery of the wife is a defense in an action for support. However, alleged adultery of the wife must be established by competent evidence. The mere allegation that the wife has committed adultery will not bar her from the right to receive support *pendente lite*. Adultery is a good defense and if properly proved and sustained will defeat the action. In determining the amount to be awarded as support *pendente lite* it is not necessary to go fully into the merits of the case, it being sufficient that the Court ascertain the kind and amount of evidence which it may deem sufficiently to enable it to justly resolve the application, one way or the other, in view of the merely provisional character of the resolution to be entered. More affidavits may satisfy the court to pass upon the appication of support *pendente lite*. It is enough that the facts be established by affidavits or other documentary evidence appearing in the record.

APPEARANCES OF COUNSEL

Eriberto D. Ignacio for petitioner.
Gonzalo D. David for private respondent.

D E C I S I O N

FERNANDEZ, *J.*:

This is a petition for *certiorari* to review the decision of the Court of Appeals in CA-G.R. No. 06928-SP entitled "*Manuel J. C. Reyes, petitioner, versus, The Hon. Leonor Ines-Luciano*

Supreme Court E-Library

as Judge of the Juvenile & Domestic Relations Court (Quezon City) and Celia Ilustre Reyes, respondents," dismissing the petition to annul the order of the respondent Judge directing the petitioner to give support *pendente lite* to his wife, Celia Ilustre-Reyes, private respondent herein, in the amount of ₱4,000.00 a month.[1]

The private petitioner, Celia Ilustre-Reyes, filed in the Juvenile and Domestic Relations Court of Quezon City a complaint dated June 3, 1976 against her husband, Manuel J.C. Reyes, for legal separation on the ground that the defendant had attempted to kill the plaintiff. The pertinent allegations of the complaint are: the complaint are:

"6.8. On March 10, 1976, defendant went to V. Ilustre and attacked plaintiff. He pummeled her with fist blows that floored her, then held her head and, with intent to kill, bumped it several times against the cement floor. When she ran upstairs to her father for protection, he pushed her at the stairway of 13 flights and she fell sliding to the ground floor. Determined to finish her off, he again gave her a strong swing at her abdomen which floored her half unconscious. Were it not for plaintiff's father, he would have succeeded killing her;

"6.9. On May 26, 1976, although on May 11 previous she ceased holding office with defendant at Bel-Air Apartments elsewhere adverted to, she went thereto to get her overnight bag. Upon seeing her, defendant yelled at her to get out of the office. When she did not mind him, he suddenly doused her with a glass of grape juice, kicked her several times that landed at her back and nape, and was going hit her with a steel tray as her driver, Ricardo Mancera, came due her screams for help. For fear of further injury and for her life, she rushed to Precinct 5 at United Nations Avenue, Manila Metropolitan Police, for assistance and protection";[2]

The plaintiff asked for support *pendente lite* for her and her three children. The defendant, petitioner herein, opposed application the application for support *pendente lite* on the ground that his wife had committed adultery with her physician.

[1] Annex "K" to Petition, *Rollo*, pp. 74-77. Decision written by Mr. Justice B. S. de la Fuente and concurred in by Mr. Justice Ramon G. Gaviola, Jr. and Mr. Justice Porfirio V. Sison.

[2] Paragraphs 6.8 and 6.9 of the Complaint, *Rollo*, p. 28.

Supreme Court E-Library

The application for support *pendente lite* was set for hearing and submitted for resolution on the basis of the pleadings and the documents attached thereto by the parties.

The respondent Judge issued an order dated March 15, 1977 granting plaintiff's prayer for alimony *pendente lite* in the amount of ₱5,000.00 a month commencing from June 1976.[3]

The petitioner filed a motion for reconsideration reiterating that his wife is not entitled to support during the pendency of the case, and, alleging that even if she is entitled, the amount awarded was excessive. The respondent Judge reduced the amount from ₱5,000.00 to ₱4,00.00 a month in an order dated June 17, 1977.[4]

Manuel J.C. Reyes filed a petition for *certiorari* in the Court of Appeals dated July 25, 1977 asking that the order granting support *pendente lite* to private respondent, Celia Ilustre-Reyes, be annulled on the ground that the respondent Judge, Leonor Ines-Luciano, had committed a grave abuse of discretion or that said order be modified inasmuch as the amount awarded as support *pendente lite* is excessive.

The Court of Appeals dismissed the petition because:

"Considering the plight of the wife during the pendency of the case for legal separation and that the husband appears to be financially capable of giving the support. We believe that the petitioner has not presented a clear case of grave abuse of discretion on the part of the respondent in issuing the questioned orders. We see no compelling reason to give it due course."[5]

The petitioner contends that the Court of Appeals committed the following error:

"THE HON. COURT OF APPEALS GRIEVOUSLY ERRED IN A MANNER AMOUNTING TO AN ERROR OF LAW AND A

---

[3] Annex "F", *Rollo*, pp. 46-49.

[4] Annex "H", *Rollo*, p. 55.

[5] Decision, *Rollo*, p. 77.

Supreme Court E-Library

DEPARTURE FROM THE ACCEPTED NORMS LAID DOWN BY THIS HON. COURT IN THE CASES WE SHALL LATER ON DISCUSS, IN REFUSING TO GIVE DUE COURSE TO THE ORIGINAL PETITION FOR *CERTIORARI* HEREIN AGAINST RESPONDENTS-APPELLEES, AND IN AFFIRMING THE ORDERS FOR SUPPORT *PENDENTE LITE* ANNEXES 'F' AND 'H' OF THIS PETITION WHEN IT HELD THAT RESPONDENT-APPELLEE JUDGE DID NOT COMMIT ANY ABUSE OF DISCRETION IN ISSUING SAID ORDERS, FOR THE REASONS THAT:

A. IN ACTIONS FOR LEGAL SEPARATION THE WIFE IS ENTITLED TO SUPPORT FROM THE HUSBAND DESPITE THE FACT THAT A CASE FOR ADULTERY HAD BEEN FILED BY THE HUSBAND AGAINST HER; AND

B. IN DETERMINING THE AMOUNT OF SUPPORT *PENDENTE LITE*, IT IS ENOUGH THAT THE COURT ASCERTAIN THE KIND AND AMOUNT OF EVIDENCE EVEN BY AFFIDAVITS ONLY OR OTHER DOCUMENTARY EVIDENCE APPEARING IN THE RECORDS."[6]

It is true that the adultery of the wife is a defense in an action for support. However, the alleged adultery of the wife must be established by competent evidence. The mere allegation that the wife has committed adultery will not bar her from the right to receive support *pendente lite*. Adultery is a good defense and if properly proved and sustained will defeat the action.[7]

In the instant case, at the hearing of the application for support *pendente lite* before the Juvenile and Domestic Relations Court presided by the respondent Judge, Hon. Leonor Ines-Luciano, the petitioner did not present any evidence to prove the allegation that his wife, private respondent Celia Ilustre-Reyes, had committed adultery with any person.

The petitioner has still the opportunity to adduce evidence on the alleged adultery of his wife when the action for legal separation is heard on the merits before the Juvenile and Domestic Relations Court of Quezon City. It is to be noted, however,

---

[6] Petition, *Rollo*, pp. 16-17.

[7] *Quintana vs. Lerma*, 24 Phil. 285-286.

Supreme Court E-Library

that as pointed out by the respondents in their comment, the "private respondent was not asking support to be taken from petitioner's personal funds or wherewithal, but from the conjugal property — which, was her documentary evidence x x x."[8] It is, therefore, doubtful whether adultery will affect her right to alimony *pendente lite*. In *Quintana vs. Lerma*,[9] the action for support was based on the obligation of the husband to support his wife.

The contention of the petitioner that the order of the respondent Judge granting the private respondent support *pendente lite* in the amount of ₱4,000.00 a month is not supported by the allegations of the complaint for legal separation and by competent evidence has no merit.

The complaint for legal separation contains allegations showing that on at least two occasions the defendant, petitioner herein, had made attempts to kill the private respondent. Thus it is alleged that on March 10, 1976, the defendant attacked plaintiff, pummeled her with fist blows that floored her, held her head and with intent to kill, bumped it several times against the cement floor and when she ran upstairs to her father for protection, the petitioner pushed her at the stairway of thirteen (13) flights and she fell sliding to the ground floor and defendant gave her a strong swing at her abdomen which floored her half unconscious and were it not for plaintiff's father, defendant would have succeeded in killing her.[10] It is also alleged that on May 26, 1976, the defendant doused Celia Ilustre-Reyes with a glass of grape juice, kicked her several times at her back and nape and was going to hit her with a steel tray if it were not for her driver who came due to her screams for help.[11]

In fixing the amount of monthly support *pendente lite* of ₱4,000.00, the respondent Judge did not act capriciously and

---

[8] Annex "J", *Rollo*, pp. 67, 70.

[9] 24 Phil. 285-286.

[10] Paragraph 6.8, *Rollo*, p. 28.

[11] Paragraph 6.9, *Rollo*, p. 28.

Supreme Court E-Library

whimsically. When she originally fixed the amount of ₱5,000.00 a month, the respondent Judge considered the following:

"On record for plaintiff's cause are the following: that she and defendant were married on January 18, 1958; that she is presently unemployed and without funds, thus, she is being supported by her father with whom she resides; that defendant had been maltreating her and tried to kill her; that all their conjugal properties are in the possession of defendant who is also president, Manager and Treasurer of their corporation, namely:

"1. Standard Mineral Products, Inc. which was incorporated on February 9, 1959; presently with paid-in capital of ₱295,670.00; assets and liabilities of ₱757,108.52; Retained Earnings of ₱85,654.61; and majority stockholder is defendant;

"2. Development and Technology Consultants, Inc. which was incorporated on July 12, 1971, with paid-in capital of ₱200,000.00; Assets and liabilities of ₱831,669.34; defendant owns 99% of the stocks; and last Retained Earnings is ₱98,879.84.

"3. The Contra-Prop Marine Philippines, Inc. which was incorporated on October 3, 1975, with paid-in capital of ₱100,000.00 and defendant owns 99% of the stocks.

"To secure some of the obligation of said corporations, an Agreement of Counter-Guaranty Mortgage with Real Estate, and Real Estate Mortgage were undertaken by plaintiff and her parents of their properties outside of other accommodations; and that she needs of ₱5,000.00 a month for her support in accordance with their station in life."[12]

The amount of support *pendente lite* was reduced to ₱4,000.00 inasmuch as the children are in the custody of the petitioner and are being supported by him.

It is thus seen that the respondent judge acted with due deliberation before fixing the amount of support *pendente lite* in the amount of ₱4,000.00 a month.

In determining the amount to be awarded as support *pendente lite*, it is not necessary to go fully into the merits of the case,

---

[12] Annex "F", *Rollo*, p. 46.

Supreme Court E-Library

it being sufficient that the court ascertain the kind and amount of evidence which it may deem sufficient to enable it to justly resolve the application, one way or the other, in view of the merely provisional character of the resolution to be entered. Mere affidavits may satisfy the court to pass upon the application for support *pendente lite*.[13] It is enough that the facts be established by affidavits or other documentary evidence appearing in the record.[14]

The private respondent has submitted documents showing that the corporations controlled by the petitioner have entered into multi-million contracts in projects of the Ministry of Public Highways.

Considering the high cost of living due to inflation and the financial ability of the petitioner as shown by the documents of record, We find that the amount of ₱4,000.00 a month granted by the respondent Judge as alimony *pendente lite* to the private respondent is not excessive. There is no showing that the respondent Judge has committed a grave abuse of discretion in granting said support.

In a resolution dated July 31, 1978, this Court issued a temporary restraining order effective immediately against the enforcement of the lower court's order giving support *pendente lite* to private respondent in the sum of ₱4,000.00 monthly commencing June 1976 and in lieu thereof to allow such support only to the extent of ₱1,000.00 a month.[15]

Later the petitioner was required to pay the support at the rate of ₱1,000.00 a month which had accumulated since June 1976 within ten (10) days from notice of the resolution.[16]

The private respondent acknowledged on November 20, 1978 having received from the petitioner, through his counsel, a check

---

[13] *Sanchez vs. Zulueta, et al.*, 68 Phil. 110, 112.

[14] *Salazar vs. Salazar*, G.R. No. L-5823, April 29, 1953, 82 Phil. 1084.

[15] *Rollo*, p. 121-f.

[16] Resolution of October 9, 1978, *Rollo*, p. 496.

Supreme Court E-Library

in the amount of ₱30,000.00 as payment of support for the period from June 1976 to November 1978 or thirty (30) months at ₱1,000.00 a month in compliance with the resolution of this Court dated October 9, 1978.

In view of the foregoing, the support of ₱4,000.00 should be made to commence on March 1, 1979.

WHEREFORE, the petition for *certiorari* is hereby denied and the decision of the Court of Appeals sought to be reviewed is affirmed with the modification that the support *pendente lite* at the rate of Four Thousand Pesos (₱4,000.00) a month should commence from March 1, 1979, without pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. L-49375. February 28, 1979]

LEOPOLDO SALCEDO, *petitioner*, *vs.* **HONORABLE JUDGE FILEMON H. MENDOZA and THE PEOPLE OF THE PHILIPPINES**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ACQUITTAL; DISMISSAL OF CRIMINAL ACTION PREDICATED ON AN ACCUSED'S RIGHT TO SPEEDY TRIAL AMOUNTS TO ACQUITTAL. — The dismissal of a criminal case predicated on the right of the accused to speedy trial amounts to an acquittal on the merits which bars the subsequent prosecution of the accused for the same offense. Such dismissal is not in reality a mere dismissal although it is generally so called, but an acquittal of the defendant because of the prosecution's failure