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felicity of their clients, they may be pardoned some infelicities of language."[34]

3. The language of this Court on the question of what pleadings enjoy absolute immunity is not swathed in obscurity. Nor has there been only change of mind — far from it. This Court has consistently adhered to what it had stated with clarity as far as 1911. If at all, the later decisions had been even more emphatic to dissipate any lurking doubt that the rule of liberality so unequivocally set forth must be upheld. The principle that calls for application is crystal-clear. The immunity parties and counsel enjoy is absolute — as long as the test of relevance is met. There is need it would seem to keep in mind that as Hokfeld pointed out the correlative of immunity is disability. Respondent Judge failed to heed such an imperative. It ought to have granted the motion to dismiss. Petitioners, to repeat, are entitled to the remedies sought. So this Court has ruled in the aforecited cases of Zurbito and Baylosis as well as People *v.* Andres.[35]

WHEREFORE, certiorari is granted and the assailed order denying the motion to dismiss is annulled. Respondent Judge or whoever may be acting in his stead is prohibited from taking any further action in Civil Case No. 94551 except to dismiss the same. To that extent, mandamus lies. No costs.

Makasiar, Aquino, Concepcion Jr., Abad Santos and *De Castro, JJ.*, concur.

Escolin, J., I concur. The alleged defamatory statements in defendant's answer easily meet the test of relevance.

Guerrero, J., is on leave.

FIRST DIVISION

[G.R. No. L-42540. November 15, 1982]

VICTOR NEPOMUCENO and CARLOS NEPOMUCENO, petitioners, *vs.* HON. JUAN B. MONTECILLO, as

[34] *Ibid,* 643.

[35] 107 Phil. 1046 (1960).

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Presiding Judge of Branch III, Court of First Instance of Quezon at Gumaca; HON. DANTE M. DIAMANTE, as the Provincial Fiscal of Quezon; HON. FELIX B. MARASIGAN, as Assistant Provincial Fiscal, Gumaca, Quezon; and PEOPLE OF THE PHILIPPINES, respondents.

SYNOPSIS

Charged with violation of Section 3602 of the Tariff and Customs Code for alleged smuggling of 30,000 cartons of blue seal cigarettes, petitioners filed a motion to dismiss on the ground of availment of amnesty pending trial under Presidential Decree 370. Respondent CFI Judge denied the motion. Hence this petition seeking to annul the order of denial and to restrain continuation of the trial. The sole issue presented is whether the criminal case against petitioners under the Tariff and Customs Code for smuggling has been extinguished by their availment of amnesty under Presidential Decree 370 during the pendency of their trial.

On review, the Supreme Court dismissed the petition holding that petitioners' case does not fall within the scope of Presidential Decree 370 which grants tax amnesty to those who voluntarily disclose previously untaxed income and/or wealth, but rather within the scope of Presidential Decree 80, another amnesty decree in respect of liabilities arising from importation, but which expressly excludes from the privilege granted therein tax violators who seek to smuggle articles subject to specific tax with pending criminal cases, such as petitioners.

Petition dismissed.

SYLLABUS

1. TAXATION; PRESIDENTIAL DECREE NO. 80; AMNESTY TAX; WHAT ARE COVERED THEREBY; CASE AT BAR.— Even if the petitioners had paid the amnesty tax under Presidential Decree No. 80, they would not have been immune from penalties for smuggling under the Tariff and Customs Code, as held by the respondent judge, because the articles they sought to smuggle were subject to specific tax which was not paid, and the petitioners had a pending criminal case for smuggling. Presidential Decree No. 80 expressly excludes from its coverage "articles subject to specific tax on which has not been paid" and "violators with pending criminal, civil and administrative cases."

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2. ID.; ID.; PRESIDENTIAL DECREE NO. 370; VOLUNTARY DISCLOSURE OF PREVIOUSLY UNTAXED INCOME/ WEALTH AND PAYMENT OF 15 PERCENT THEREOF REQUIRED FOR ENTITLEMENT TO IMMUNITY THEREUNDER.— Even assuming that Presidential Decree No. 370 would apply to importation and non-payment of customs duty, the petitioner could not derive comfort therefrom. For, thereunder, one who claims immunity must have voluntarily disclosed his previously untaxed income/wealth and must have paid "15% on such previously untaxed income/wealth." The petitioners did not and could not make a *voluntary* disclosure of the smuggled cigarettes because the smuggling had already been discovered when the petitioners and their co-conspirators were *caught* by the police. Moreover, petitioners allegedly had paid as amnesty tax "15% of the fine imposable upon them if found guilty," which is different from "15% of the previously untaxed income/wealth" prescribed in Presidential Decree 370.

APPEARANCES OF COUNSEL

Tagumpay Nanadiego & Juan T. David for petitioners.
The Solicitor General for respondents.

DECISION

PLANA, *J.*:

Prosecuted for smuggling 30,000 cartons of blue seal cigarettes (violation of Section 3602 of Republic Act No. 1937, otherwise known as Tariff and Customs Code) in Criminal Case No. 2061-G of the Court of First Instance of Quezon, Branch III, presided over by respondent Judge Juan B. Montecillo, petitioners filed a motion to dismiss on the ground of availment of amnesty pending trial under Presidential Decree 370. The respondent judge denied the motion, ruling that the petitioners' case does not fall within the coverage of Presidential Decree 370 but rather within the scope of Presidential Decree 80, another Amnesty Decree in respect of liabilities arising from importation which expressly excludes from the privilege granted therein tax violators with pending criminal cases.

In this petition for certiorari and prohibition, the petitioners seek to annul the orders of respondent judge denying their motion to dismiss and to restrain continuation of the trial.

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Meanwhile, this Court has issued a temporary restraining order against further proceedings in Criminal Case No. 2061-G.

The sole issue presented is whether the criminal case against the petitioners under the Tariff and Customs Code for smuggling has been extinguished by their availment of amnesty under Presidential Decree 370 during the pendency of their trial.

We resolve the issue in the negative, even assuming that the petitioners indeed have availed of Presidential Decree 370-an assumption that is seriously controverted by the People because the evidence (xerox copies of Tax Payment Acceptance Orders and receipts of tax payment purportedly issued by the Bureau of Internal Revenue) submitted by the petitioners in support of their claim of amnesty availment merely refer to *File Numbers* of *unnamed* taxpayers.

The scope and effect of Presidential Decree 370 can be made clearer by a brief reference to its forerunners: Presidential Decree 23 and Presidential Decree 157. Presidential Decree 23, enacted in 1972, declared an amnesty for *non-payment of income tax* on income realized in 1971 and prior years by condoning civil and criminal liabilities arising from such non-payment of *income tax:*

"In all cases of voluntary disclosures of previously untaxed *income* . . ., the collection of the income tax and penalties incident to non-payment, as well as all criminal and civil liabilities under the National Internal Revenue Code, the Revised Penal Code, the Anti-Graft and Corrupt Practices Act or any other law applicable thereto, is hereby condoned and, in lieu thereof, tax of ten percentum (10%) on such previously untaxed income is hereby imposed . . ."

Presidential Decree 157 extended the application of Presidential Decree 23 to untaxed income realized in 1972.

And then came Presidential Decree 370—enacted upon the recommendation of the Bureau of Internal Revenue, as were Presidential Decree 23 and Presidential Decree 157—which reads:

"A tax amnesty is hereby granted to any person, natural or juridical, who for any reason whatsoever failed to avail of Presidential Decree 23 and Presidential Decree 157; or, in so availing of the said Presidential Decrees

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failed to include all that were required to be declared therein if he now *voluntarily discloses* under this decree all his previously *untaxed income and/or wealth* such as earnings, receipts, gifts, bequests or any other acquisitions from any source whatsoever which are or were previously *taxable under the National Internal Revenue Code,* realized here or abroad by condoning all internal revenue taxes including the increments or penalties on account of non-payment as well as all civil, criminal or administrative liabilities, under the National Internal Revenue Code, the Revised Penal Code, the Anti-Graft and Corrupt Practices Act, the Revised Administrative Code, the Civil Service Laws and Regulations, laws and regulations on Immigration and Deportation, or any other applicable law or proclamation, as it is hereby condoned, provided *a tax of fifteen (15%) percentum on such previously untaxed income and/or wealth* is imposed . . . " (P.D. 370, Item 1. Italics supplied.)

Presidential Decree 370 speaks of income/wealth which are "taxable under the National Internal Revenue Code" the taxes on which have not been paid, and the voluntary disclosure of such "untaxed income/wealth." The effect of this voluntary disclosure of untaxed income/wealth under the National Internal Revenue Code and the payment of the prescribed amnesty tax thereon, was the condonation of all national internal revenue taxes as well as all administrative, civil and criminal liabilities (under any law) *founded upon or arising from non-payment of national internal revenue taxes.*

Quite apart from its context, Presidential Decree 370 could not have been intended to apply to non-payment of customs duty which was already covered by a special law precisely enacted to grant amnesty for *delinquencies and liabilities arising from importation.* This was initially Presidential Decree 53 which prescribed:

"WHEREAS, Martial Law has been declared throughout the Philippines pursuant to Proclamation No. 1081, dated September 21, 1972;

"WHEREAS, among the bases of said Proclamation is the economic anarchy perpetrated by some elements, especially in the form of *importation* into the Philippines of goods, merchandise, commodities, wares, articles and other items on which taxes and duties/charges are due but which taxes and duties/charges are not paid, to the detriment of the economic life of the Nation;

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"WHEREAS, in order to insure that all concerned will pay the correct amount of taxes and/or duties/charges on the goods, merchandise, wares, articles and other items they *import* into the Philippines for personal use, or for sale, wholesale or retail, it is necessary that such importers, possessors and/or dealers in *imported* goods, merchandise, wares, articles and other items be dealt with expeditiously according to the existing laws, rules and regulations;

"WHEREAS, the implementation of this Decree will be more effective if the violators hereof can be immediately immobilized to prevent them from further engaging in the same unlawful and nefarious activities;

"NOW, THEREFORE, I, FERDINAND E. MARCOS, in my capacity as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972 and Presidential Decree No. 1, dated September 24, 1972, do hereby order and decree:

> "1. That any importer, dealer, holder, possessor or owner of items, commodities, goods, articles or merchandise, the taxes, duties and other charges on which have not been paid or not correctly paid because of misdeclaration, misclassification, under-valuation and/or other fraudulent means shall be relieved of any penalty, surcharges or increment thereon and of any criminal liability under the National Internal Revenue Code, *Customs and Tariff Code* or any other laws applicable thereto if the correct and full taxes, duties and charges thereon are paid on or before December 15, 1972 . . . ."

Later, item 1 above of Presidential Decree 53 was amended and restricted by Presidential Decree 80 so as to read:

"1. That any importer, dealer, possessor or owner in commercial quantities of items, commodities, goods, articles or merchandise, the taxes, duties and/or other charges on which have not been paid or not correctly paid because of misdeclaration, misclassification, under-valuation and/or other fraudulent means shall be relieved of any penalty, surcharge or increment incident thereto and of any criminal liability under the National Internal Revenue Code, *Customs and Tariff Code* or any other laws applicable thereto if twenty-five per centum (25%) of the correct taxes, duties and charges due thereon are paid in full on or before January 31, 1973 in final and complete settlement thereof, except motor vehicles which are covered by Presidential Decree No. 52, dated November 16, 1972, as well as *articles subject to specific tax the tax on which has not been paid and violators with pending criminal, civil and administrative cases.*" (Italics supplied.)

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It is clear from a reading of the foregoing provision that even if the petitioners had paid the amnesty tax under Presidential Decree 80, they would not have been immune from penalties for smuggling under the Tariff and Customs Code, as held by the respondent judge, because the articles they sought to smuggle were subject to specific tax which was not paid, and the petitioners had a pending criminal case for smuggling. Presidential Decree 80 expressly excludes from its coverage "articles subject to specific tax the tax on which has not been paid" and "violators with pending criminal, civil and administrative cases."

Even assuming that Presidential Decree 370 would apply to importation and non-payment of customs duty, the petitioner could not derive comfort therefrom. For thereunder, one who claims immunity must have voluntarily disclosed his previously untaxed income/wealth and must have paid "15% on such previously untaxed income/wealth."

The petitioners did not and could not make a *voluntary* disclosure of the smuggled cigarettes because the smuggling had already been discovered when the petitioners and their co-conspirators were *caught* by the police. Moreover, petitioners allegedly had paid as amnesty tax "15% of the fine imposable upon them if found guilty," which is different from "15% of the previously untaxed income/wealth" prescribed in Presidential Decree 370.

Since the respondent judge, in denying petitioners' motion to dismiss, committed no abuse, much less grave abuse of discretion amounting to a jurisdictional error, the instant petition is hereby dismissed. The temporary restraining order heretofore issued by this Court is hereby lifted and the lower court is ordered to proceed with the trial of the case. Costs against petitioners.

Teehankee (Chairman), Melencio-Herrera, Vasquez, Relova and *Gutierrez, Jr., JJ.*, concur.