Supreme Court E-Library

SO ORDERED.

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

SECOND DIVISION

[G.R. No. L-47880. April 30, 1979]

WILSON AGBAYANI, CARMELO BAUTISTA, PABLO PASCUAL and RENATO ROMEO DUGAY, *petitioners, vs.* **HONORABLE SOFRONIO G. SAYO, Presiding Judge of Court of First Instance of Nueva Vizcaya, Branch I, the PEOPLE OF THE PHILIPPINES And CONRADO B. MAHINAN,** *respondents.*

SYLLABUS

1. ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; INCLUDES GSIS BRANCH MANAGER. — A Government Service Insurance System branch manager is unquestionably a public officer. (See Sec. 1 (1) (B), Art. XII and Sec. 5, Art. XIII, Constitution and Sec. 2(a) and (b), Republic Act No. 3019).

2. CRIMINAL LAW; WRITTEN DEFAMATION; RULE ON VENUE FOR CRIMINAL AND CIVIL ACTIONS. — The rules on venue of criminal and civil actions for written defamation as provided for in article 360 of the Revised Penal Code are: 1. Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published. 2. If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense. 3. If the offended party is a public officer whose office is in Manila at the time of the commission

Supreme Court E-Library

of the offense, the action may be filed in the Court of First Instance of Manila. 4. If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense.

3. *ID.; ID.;* **PERSONS AUTHORIZED TO CONDUCT PRELIMINARY INVESTIGATION OF WRITTEN DEFAMATION.** — As a corollary to the rules on venue of criminal actions for written defamation and to prevent the harassment of the accused by means of criminal complaints in remote municipal courts, the *preliminary investigation of the criminal action for written* defamation shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such action may be instituted. The Court of First Instance of the province or city where the *criminal action may be filed may also conduct the preliminary* investigation of the case pursuant to section 13, Rule 112 of the Rule of Court.

4. **ID.; ID.; RULE TO OBVIATE CONTROVERSIES AS TO VENUE.** — In order to obviate controversies as to venue of the criminal action for written defamation, the complaint or information should contain allegations as to whether, at the time the offense was committed, the offended party was a public officer or a private individual and where he was actually residing at that time. Whenever possible, the place where the written defamation was printed and first published should likewise be alleged. The allegation would be a *sine qua non* if the circumstance as to where the libel printed the first published is used as the basis of the venue of the action.

5. *ID.; ID.;* **WHEN INFORMATION DEFECTIVE.** — *An information* for written defamation is detective or deficient if it does not show that the Court of First Instance where it is filed has jurisdiction to entertain the criminal action and that the provincial fiscal of that province has the authority to conduct the *preliminary investigation.*

6. **REMEDIAL LAW; ACTIONS; VENUE IS AN ESSENTIAL ELEMENT OF JURISDICTION.** — Venue in criminal cases is an essential element of jurisdiction.

Supreme Court E-Library

DECISION

AQUINO, *J.*:

This case is about the venue of a criminal action for written defamation. Conrado B. Mahinan, a lawyer, was the manager since September 24, 1973 of the Cagayan Valley Branch of the Government Service Insurance System (GSIS) stationed at Cauayan, Isabela. Among his subordinates in that branch office were Wilson Agbayani, chief of the investment unit; Carmelo N. Bautista, chief of the production and premium unit; Pablo R. Pascual, officer-in-charge of the legal and claims unit, and Renato Romeo P. Dugay, an employee of the claims unit.

On March 8, 1976, Mahinan filed with the fiscal's office at Bayombong, Nueva Vizcaya a complaint for written defamation against Agbayani, Bautista, Pascual and Dugay.

Two days later, or on March 10, 1976, the Board of Trustees of the GSIS in its Resolution No. 373 considered Mahinan as resigned from the service as of the close of business hours on that date. Mahinan appealed to the Civil Service Commission which later directed the GSIS Board of Trustees to reinstate him "to his former position, or at the discretion of the proper official and in the interest of the service, he may be assigned to another station or branch without demotion in rank, salary and privileges." So, Mahinan is back in the service (pp. 2-3, Memorandum of Mahinan, pp. 200-1, *Rollo*).

On July 23, 1976, the provincial fiscal of *Nueva Vizcaya* filed in the Court of First Instance of that province an information for libel charging Agbayani, Bautista, Pascual and Dugay with having maliciously made defamatory imputations against Mahinan on or about *February 17, 1976* in Bambang, Nueva Vizcaya (Criminal Case No. 509).

Quoted in the information were the affidavits of Pascual and Bautista signed at Cauayan, Isabela on October 6, 1975; Bautista's undated letter asking for Mahinan's dismissal, and Agbayani's "unusual incident report" of October 3, 1975

Supreme Court E-Library

subscribed and sworn to before a Manila notary and enclosing documentary evidence to support his charges of malversation and falsification against Mahinan and praying for the latter's separation from the service.

According to the information, all those documents allegedly depicted Mahinan "as an incorrigible managerial misfit, despoiler of public office, spendthrift of GSIS funds, inveterate gambler, chronic falsifier," and an "unreformed ex-convict."

The four accused filed a motion to quash. They contended that the Court of First Instance of *Nueva Vizcaya* has no jurisdiction over the offense charged because Mahinan was a public officer holding office at Cauayan, Isabela when the alleged libel was committed and, under Article 360 of the Revised Penal Code, the offense charged comes within the jurisdiction of the Court of First Instance of *Isabela*. They argued that the provincial fiscal of Nueva Vizcaya had no authority to conduct the preliminary investigation and to file the information.

That motion was opposed by the fiscal. It was denied by the trial court in its order of April 25, 1977 on the ground that Mahinan was not a public officer within the meaning of Article 203 of the Revised Penal Code since the insurance business of the GSIS is not an inherently governmental function. The court reasoned out that since Mahinan was not a public officer, his residence, which was allegedly in Bambang, Nueva Vizcaya, and not Cauayan, Isabela, where he had his office, would be the criterion for determining the venue of the criminal action for libel.

On March 2, 1978, or after petitioners' motion for the reconsideration of that order was denied, they filed in this Court the instant petition for *certiorari* and prohibition to enjoin the prosecution of the libel case on the ground of improper venue.

The issue is whether the venue of the criminal action for written defamation filed by Mahinan is Nueva Vizcaya or Isabela. There is no issue as to whether Mahinan is a public officer. As GSIS branch manager, he is unquestionably a public officer.

Supreme Court E-Library

(See Sec. 1[1][B], Art. XII and Sec. 5, Art. XIII, Constitution and Sec. 2[a] and [b], Republic Act No. 3019.)

Mahinan in his memorandum does not support the trial court's theory that he was not a public officer at the time of the commission of the alleged libel. Instead, he relies on the rule that the trial court's jurisdiction is determined by the allegations in the information and since it was alleged that the libel was committed in Bambang, Nueva Vizcaya, he argues that the trial court, *prima facie*, has jurisdiction over the case. This contention is devoid of merit and shows unawareness of the provisions of Article 360 of the Revised Penal Code, as amended.

Article 360, which lays down the rules on venue in cases of written defamation and which specifies the officer or court that should conduct the preliminary investigation, reads as follows:

"ART. 360. *Persons responsible.* — x x x

xxx xxx xxx

"The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense:

"*Provided, however,* That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published:

"*Provided, further,* That the civil action shall be filed in the same court where the criminal action is filed and *vice versa*:

Supreme Court E-Library

"*Provided furthermore,* That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts:

"*And provided, finally,* That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions to which have been filed in court at the time of the effectivity of this law.

"Preliminary investigation of criminal actions for written defamations as provided for in the chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such actions may be instituted in accordance with the provisions of this article.

"x x x x x x x x x."

(As amended by Republic Act Nos. 1289 and 4363 which were approved on June 15, 1955 and June 19, 1965, respectively.)

Article 360 in its original form provided that the venue of the criminal and civil actions for written defamations is the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed. Article 360 originally did not specify the public officers and the courts that may conduct the preliminary investigation of complaints for libel.

Before Article 360 was amended, the rule was that a criminal action for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where it was written or printed (*People vs. Borja*, 43 Phil. 618). Under that rule, the criminal action is transitory and the injured party has a choice of venue.

Experience had shown that under that old rule the offended party could harass the accused in a libel case by laying the venue of the criminal action in a remote or distant place.

Thus, in connection with an article published in the *Daily Mirror* and the *Philippine Free Press*, Pio Pedrosa, Manuel V. Villareal and Joaquin Roces were charged with libel in the justice of the peace court of San Fabian, Pangasinan (*Amansec vs. De Guzman,* 93 Phil. 933).

Supreme Court E-Library

To forestall such harassment, Republic Act No. 4363 was enacted. It lays down specific rules as to the venue of the criminal action so as to prevent the offended party in written defamation cases from inconveniencing the accused by means of out-of-town libel suits, meaning complaints filed in remote municipal courts (Explanatory Note for the bill which became Republic Act No. 4363, Congressional Record of May 20, 1965, pp. 424-5; *Time, Inc. vs. Reyes*, L-28882, May 31, 1971, 39 SCRA 303, 311).

The rules on venue in Article 360 may be restated thus:

1. Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published.

2. If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense.

3. If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila.

4. If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense.

As a corollary and in view of the legislative intent to prevent the harassment of the accused by means of criminal complaints in remote municipal courts, the preliminary investigation of the criminal action for written defamation shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such action may be instituted.

The Court of First Instance of the province or city where the criminal action may be filed may also conduct the preliminary investigation of the case pursuant to Section 13, Rule 112 of

Supreme Court E-Library

the Rules of Court (*Escribano vs. Avila*, L-30375, September 12, 1978).

Applying the foregoing rules to this case, we hold that the proper venue of Mahinan's criminal action for written defamation against the petitioners is the Court of First Instance of *Isabela*, since as a GSIS branch manager, he was a public official stationed at Cauayan, Isabela and the alleged libel was committed when he was (as he still) in the public service. The preliminary investigation of the complaint should have been conducted by the provincial fiscal of Isabela, or by the municipal judge of Ilagan, the provincial capital, or by the Court of First Instance of the same province.

The criminal action could have been filed also in the Court of First Instance of the province or in the city court of the city where the libel was printed and first published.

In order to obviate controversies as to the venue of the criminal action for written defamation, the complaint or information should contain allegations as to whether, at the time the offense was committed, the offended party was a public officer or a private individual and where he was actually residing at that time. Whenever possible, the place where the written defamation was printed and first published should likewise be alleged. That allegation would be a *sine qua non* if the circumstance as to where the libel was printed and first published is used as the basis of the venue of the action.

In the instant case, the venue was laid in Nueva Vizcaya. It was alleged in the information that the libel was committed in Bambang, a town located in that province. It was not alleged that at the time the libel was committed Bambang was the actual residence of complainant Mahinan or that it was the place where the libel was printed and first published or where Mahinan held his office.

The alleged defamatory documents quoted in the information do not justify the filing of the information in the Court of First Instance of Nueva Vizcaya. Thus, as already noted, the affidavits of the accused, Bautista and Pascual, both dated October 6,

Supreme Court E-Library

1975, were subscribed and sworn to at Cauayan, Isabela before the municipal judge thereof. The "Unusual Incident Report" submitted by the accused, Agbayani, also quoted in the information and likewise alleged to be defamatory, was subscribed and sworn to before a Manila notary on October 3, 1975. That report indicates Cauayan, Isabela as the place where Mahinan held office. Bambang, Nueva Vizcaya was not mentioned at all in those alleged defamatory documents.

We hold that the information in this case is defective or deficient because it does not show that the Court of First Instance of Nueva Vizcaya, where it was filed, has jurisdiction to entertain the criminal action for written defamation initiated by Mahinan against the petitioners and that the provincial fiscal of that province had the authority to conduct the preliminary investigation.

Consequently, the trial court erred in not sustaining petitioners' motion to quash on the grounds of lack of jurisdiction and lack of authority to file the information (Sec. 2[b] and [c], Rule 117, Rules of Court).

The allegation in the information that the libel was committed in Bambang, Nueva Vizcaya is not sufficient to show that the Court of First Instance of that province has jurisdiction over the case. The alleged libelous documents quoted in the information show that Nueva Vizcaya is not the proper venue of the criminal action.

Venue in criminal cases is an essential element of jurisdiction (*Lopez vs. City Judge*, L-25795, October 29, 1966, 18 SCRA 616; *U. S. vs. Pagdayuman,* 5 Phil. 265; *U. S. vs. Reyes,* 1 Phil. 249; *Ragpala vs. J. P. of Tubod, Lanao*, 109 Phil. 373, 378).

The trial court in its questioned order admits that if Mahinan was a public officer at the time the written defamation was committed, it would have no jurisdiction to try the case since the venue of the action should be Isabela where Mahinan held office at the time of the commission of the offense. In this memorandum, Mahinan has not questioned his status as a public officer and he admits that Cauayan, Isabela was his official station.

Supreme Court E-Library

WHEREFORE, the trial court's order of April 25, 1977, denying petitioners' motion to quash is set aside. It is directed to dismiss Criminal Case No. 509, the libel case against the petitioners, without prejudice to the filing of another criminal action for written defamation in the Court of First Instance of Isabela within the remainder of the prescriptive period, if warranted according to the result of a proper and duly conducted preliminary investigation. Costs against respondent Mahinan.

SO ORDERED.

Fernando, C.J., Barredo, Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

SECOND DIVISION

[G.R. No. L-49003. April 30, 1979]

D. O. PLAZA ENTERPRISES, INC., now known as AGUSAN WOOD INDUSTRIES, INC., *petitioner, vs.* **THE HON. CARMELO C. NORIEL, as Director of the BUREAU OF LABOR RELATIONS, DANILO P. CRUZ, as Officer-In-Charge of the BUREAU OF LABOR RELATIONS, MINDANAO ASSOCIATION OF TRADE UNIONS (MATU), PHILIPPINE LABOR ALLIANCE COUNCIL, (PLAC),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CERTIFICATION ELECTION; MANAGEMENT TO MAINTAIN A HANDS-OFF POLICY. — The institution of collective bargaining is designed to assure that the other party, labor is free to choose its representatives. To resolve any doubt on