

REMEDIAL LAW

NICASIO I. ALCANTARA *v.* VICENTE C. PONCE
G.R. No. 156183, 28 February 2007, Corona, J. (First Division)



Actions and utterances in judicial proceedings so far as the actual participants therein are concerned and preliminary steps leading to judicial action of an official nature have been given absolute privilege. While the Doctrine of Privileged Communication can be abused, and its abuse can lead to great hardships, to allow libel suits to prosper strictly on this account will give rise to even greater hardships. The one obstacle that those pleading the defense of privileged communication must hurdle is the test of relevancy.

A newsletter qualified as “a communication made bona fide upon any subject-matter in which the party communicating has an interest . . . made to a person having a corresponding interest or duty, although it contained incriminatory matter, which without this privilege, would be slanderous and actionable.”

Vicente C. Ponce filed a string of criminal complaints, including one for estafa, against Nicasio Alcantara and his family, in the Makati Prosecutor’s Office. In essence, Ponce alleged that Alcantara had swindled him out of 3,000,000 shares of Floro Cement Corporation. During the preliminary investigation of the complaint for estafa and shortly after giving his sur-rejoinder affidavit, Ponce submitted a newsletter purporting to be a belated annex to the affidavit. It was prefaced with the quotation “For every extraordinary fortune there is a great crime.”

In connection with the aforesaid newsletter, Alcantara filed a complaint for libel against Ponce. He claimed that the statements therein were defamatory and the newsletter could not be considered an annex to the sur-rejoinder because it was not attached to the affidavit but had given it thereafter. The prosecutor conducting the preliminary investigation found probable cause for libel and recommended the filing of information in court. Thereafter, the case was filed with the Regional Trial Court of Makati.

Ponce filed a petition for review with the Secretary of Justice, who reversed the City Prosecutor. The reversal was based on the finding that the newsletter was a privileged communication, having been submitted as an intended annex to Ponce’s sur-rejoinder.

The Office of the Makati City Prosecutor then filed a motion to withdraw information, which the trial court granted. The trial court ruled that the absence of the essential element of publicity precluded the commission of the crime of libel. Alcantara moved for reconsideration of the withdrawal of the information but the trial court denied the motion. Alcantara filed another *petition for certiorari* in the CA. CA affirmed the trial court's decision holding that the newsletter is a privileged communication. Hence, this petition.

ISSUE:

Whether or not the controversial newsletter constituted privileged communication, which would exempt Ponce from libel

HELD:

Petition DISMISSED.

As the CA correctly held:

It is a settled principle in this jurisdiction that statements made in the course of judicial proceedings are absolutely privileged. This absolute privilege remains regardless of the defamatory tenor and the presence of malice if the same are relevant, pertinent or material to the cause in hand or subject of the inquiry. The lone requirement imposed to maintain the cloak of absolute privilege is the test of relevancy.

In this case, a reading of the Sur-Rejoinder Affidavit, contrary to Alcantara's submission, instantly shows that there was sufficient reference to the "newsletter" in holding that Ponce actually intended the said article to be included as an annex attached to said pleading and that the same was merely omitted and belatedly submitted to Prosecutor Bautista during the preliminary investigation.

Furthermore, the "newsletter" containing the defamatory statement is relevant and pertinent to the criminal complaint for estafa then under preliminary investigation. The crime of estafa involves deceit, dishonesty and other fraudulent acts. The inclusion in the Sur-Rejoinder Affidavit of the "newsletter" discussing the alleged "corporate grabbing" by Alcantara will tend to support Ponce's case of estafa against Alcantara insofar as such alleged "corporate grabbing" will highlight or manifest the latter's propensity for dishonest dealing or fraudulent machinations.

In determining the issue of relevancy of statements made in judicial proceedings, courts have adopted a liberal attitude by resolving all doubts in favor of relevancy.

Since the newsletter was presented during the preliminary investigation, it was vested with a *privileged character*. While Philippine law is silent on the question of whether the doctrine of absolute privilege extends to statements made in preliminary investigations or other proceedings preparatory to the actual trial, the U.S. case of *Borg v. Boas* makes a categorical declaration of the existence of such protection:

It is hornbook learning that the actions and utterances in judicial proceedings so far as the actual participants therein are concerned and preliminary steps leading to judicial action of an official nature have been given absolute privilege. Of particular interest are proceedings leading up to prosecutions or attempted prosecutions for crime xxx [A] written charge or information filed with the prosecutor or the court is not libelous although proved to be false and unfounded.

The one obstacle that those pleading the defense of privileged communication must hurdle is the test of relevancy. Under this test, a matter alleged in the course of the proceedings need not be in every case material to the issues presented but should be legitimately related to the issues or be so pertinent to the controversy that it may become the subject of inquiry in the course of trial.

Here, the controversial statements were made in the context of a criminal complaint against Alcantara. Liberally applying the privileged communication doctrine, these statements were still relevant to the complaint under investigation because, like the averments therein, they also involved Alcantara's alleged rapacity and deceitfulness.