REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SPECIAL SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Special Second Division, issued a Resolution dated **08 January 2020** *which reads as follows*:

"**G.R. No. 211120 (*Medel Arnaldo B. Belen v. People of the Philippines*).** - Petitioner Medel Arnaldo B. Belen seeks reconsideration of the Court's Decision dated February 13, 2017, denying his petition for review on *certiorari*, and affirming the Court of Appeals Decision dated April 12, 2013 with modification, increasing the penalty for libel imposed upon him from Three Thousand Pesos (₱3,000.00) to Six Thousand Pesos (₱6,000.00), with subsidiary imprisonment in case insolvency.

The Motion for Reconsideration and Supplemental Motion for Reconsideration are denied for lack of merit.

First, insisting on the absence of the element of publication, petitioner argues that receipt of the Omnibus Motion and the subsequent reading of its contents by prosecution witnesses Joey Flores and Gayne Gamo Enseo, legal staff of the City Prosecutor's Office of San Pablo City, and Michael Belen, representative of Nezer Belen in the estafa complaint filed before the said Office, constituted privileged communication.

Petitioner's argument fails to persuade. The Court finds no compelling reason to reverse its exhaustive ruling on the issue of presence of publication, thus:

> In claiming that he did not intend to expose the Omnibus Motion to third persons, but only complied with the law on how service and filing of pleadings should be done, petitioner conceded that the defamatory statements in it were made known to someone other than the person to whom it has been written. Despite the fact that the motion was contained in sealed envelopes, it is not unreasonable to expect that persons other than the one defamed would be able to read the defamatory statements in it, precisely because they were filed with the OCP of San Pablo City and copy furnished to Nezer, the respondent in the estafa complaint, and the Office of the Secretary of Justice in Manila. Then being a lawyer, petitioner is well aware that such motion is not a mere private communication, but forms part of public record when filed with the government office. Inasmuch as one is disputably presumed to intend the natural and probable consequence of his

act, petitioner cannot brush aside the logical outcome of the filing and service of his Omnibus Motion. As aptly noted by the trial court:

> x x x The Omnibus Motion although contained in a sealed envelope was addressed to the Office of the City Prosecutor, San Pablo City. As such, the accused fully well knows that the sealed envelope will be opened at the receiving section, and will be first read by the staff of the Office before the private complainant gets hold of a copy thereof. In fine, the Omnibus Motion was not sent straight to the private complainant — the person [to] whom it is written, but passed through other persons in the Office of the City Prosecutor. At the time the accused mailed the sealed envelope containing the Omnibus Motion addressed to the Office of the City Prosecutor, he knew that there exists not only a reasonable but strong probability that it will be exposed to be read or seen by third persons.

It is not amiss to state that generally, the requirement of publication of defamatory matters is not satisfied by a communication of such matters to an agent of the defamed person. In this case, however, the defamatory statement was published when copy of the Omnibus Motion was furnished to and read by Michael, the son and representative of respondent Nezer in the estafa complaint, who is clearly not an agent of the defamed person, ACP Suñega-Lagman.

Petitioner then argues that there is no publication as to Flores and Enseo, the staff of the OCP of San Pablo City, who had read the contents of the Omnibus Motion. In support thereof, he cites the settled rule that "when a public officer, in the discharge of his or her official duties, sends a communication to another officer or to a body of officers, who have a duty to perform with respect to the subject matter of the communication, such communication does not amount to publication." Petitioner's argument is untenable. As mere members of the administrative staff of the OCP of San Pablo City, Flores and Enseo cannot be said to have a duty to perform with respect to the subject matter of his motion, which is to seek reconsideration of the dismissal of his Estafa complaint and to disqualify ACP Suñega-Lagman from the preliminary investigation of the case. Their legal duty pertains only to the clerical procedure of transmitting the motions filed with the OCP of San Pablo City to the proper recipients.[1]

Second, petitioner asserts that the Omnibus Motion he filed in the preliminary investigation before the City Prosecutor's Office was absolutely privileged. He theorizes that all pleadings filed in judicial proceedings, including those submitted by lawyers in a preliminary investigation, no matter how acerbic the words stated therein, are considered absolutely privileged without incurring any risk of criminal prosecution or an action for recovery of damages.

Petitioner's theory is flawed because the principle of absolute privileged communication is not without limitation, but is subject to the test

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[1] *Rollo*, pp. 270-272. (Citations omitted).

of relevancy. The Court has already rejected petitioner's argument in this wise:

> The statements in petitioner's Omnibus Motion filed before the OCP of San Pablo City as a remedy for the dismissal of his estafa complaint during preliminary investigation, fall short of the test of relevancy. An examination of the motion shows that the following defamatory words and phrases used, even if liberally construed, are hardly material or pertinent to his cause, which is to seek a reconsideration of the dismissal of his estafa complaint and the disqualification of ACP Suñega-Lagman from further acting on the case: (1) **"manifest bias for 20,000 reasons"**; (2) **"the Investigating Fiscal's wrongful assumptions were tarnished in silver ingots"**; (3) **"the slip of her skirt shows a corrupted and convoluted frame of mind"**; (4) **"corrupted and convoluted 20,000 reasons"**; (5) **"moronic resolution"**; (6) **"intellectually infirm or stupid blind"**; (7) **"manifest partiality and stupendous stupidity"**; (8) **"idiocy and imbecility of the Investigating Fiscal"**; and (9) **"a fraud and a quack bereft of any intellectual ability and mental honesty."** These statements are neither relevant grounds for a motion for reconsideration nor valid and justifiable reasons for disqualification. These diatribes pertain to ACP Suñega-Lagman's honor, reputation, mental and moral character, and are no longer related to the discharge of her official function as a prosecutor. They are devoid of any relation to the subject matter of petitioner's Omnibus Motion that no reasonable man can doubt their irrelevancy, and may not become the subject of inquiry in the course of resolving the motion. As fittingly ruled by the trial court:
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> > This Court has no problem with legitimate criticisms of the procedures taken during the preliminary investigation and accused's comments pointing out flaws in the ruling of the private complainant. They should ever be constructive and should pave the way at correcting the supposed errors in the Resolution and/or convincing the private complainant to inhibit, as she did, from the case. Unfortunately, the Omnibus Motion, or the questioned allegations contained therein, are not of this genre. On the contrary, the accused has crossed the lines as his statements are baseless, scurrilous attacks on the person of the private complainant. The attacks did nothing but damage the integrity and reputation of the private complainant. In fact, the attacks undermined in no small measure the faith and confidence of the litigants in the prosecutorial service.
>
> Petitioner should bear in mind the rule that the pleadings should contain but the plain and concise statements of material facts and not the evidence by which they are to be proved. If the pleader goes beyond the requirements of the statute, and alleges an irrelevant matter which is libelous, he loses his privilege. The reason for this is that without the requirement of relevancy, pleadings could be easily diverted from their original aim to succinctly inform the court of the issues in litigation and pervaded into a vehicle for airing charges motivated by a personal rancor. Granted that lawyers are given great latitude or pertinent comment in furtherance of the causes they uphold, and for the felicity of their clients, they may be pardoned some infelicities of language, petitioner would do well to recall that the Code of Professional Responsibility ordains that a

> lawyer shall not, in his professional dealings use language which is abusive, offensive or otherwise improper. After all, a lawyer should conduct himself with courtesy, fairness and candor toward his professional colleagues, and use only such temperate but strong language in his pleadings or arguments befitting an advocate.[2]

Granted that the Omnibus Motion contains lengthy explanations why the prosecutor erred in dismissing petitioner's estafa case, including his opinions and impressions of ACP Suñega-Lagman's bias, partiality and incompetence, the Court finds that libel will still prosper because petitioner was shown to have publicly alleged facts that can be proven to be true or false. As aptly pointed out by the trial court, the phrases "*manifest bias for 20,000 reasons,*" "*the Investigating Fiscal's wrongful assumptions were tarnished in silver ingots,*" "*the slip of her skirt shows a corrupted and convoluted frame of mind,*" and "*corrupted and convoluted 20,000 reasons,*" connote something sinister and criminal, attributing to the private complainant as one who accepts bribes.[3] Petitioner's allegation of bribery can be proven to be true or false, and it was published when the Omnibus Motion was read by persons other than the one defamed, who have no duty to perform with respect to the subject matter thereof, which was to seek reconsideration of the dismissal of the estafa complaint and to disqualify ACP Suñega-Lagman from the preliminary investigation of the case.

Third, taking cue from the dissenting opinion that assuming that the communications are not absolutely privileged, the statements are at the very least qualifiedly privileged, petitioner contends that he should be acquitted of the charge of libel because actual malice was not proven. Petitioner claims that the prosecution failed to prove (1) that the acerbic words therein was written and submitted in reckless disregard for the truth, (2) that he did not believe his allegations, and (3) that he made those statements with knowledge that they were false. Petitioner also argues that since ACP Suñega-Lagman is a public official discharging quasi-judicial function in the executive branch of the government, she is subject to the pronouncement in *Guingguing v. Court of Appeals*[4] where it was held that in order to justify a conviction for criminal libel against a public figure or public officer, it must be established beyond reasonable doubt that the libelous statements were made or published with actual malice, meaning knowledge that the statement was false or with reckless disregard as to whether or not it was true.

Petitioner's contentions are untenable.

As in *Tulfo v. People, et al.*,[5] the Court notes that the defense of petitioner's Omnibus Motion being qualifiedly privileged communication is

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2 *Id.* at 273-274. (Citations omitted; emphasis supplied).
3 RTC Decision, p. 24; *id.* at 114.
4 508 Phil. 193, 216 (2005).
5 587 Phil. 64, 82 (2008).

raised for the first time in this motion for reconsideration. As this particular issue was never brought before either the RTC or the CA, said courts had no chance to properly consider and evaluate this defense. This lays an unusual burden on the part of the prosecution, the RTC, and the CA to refute a defense that petitioner had never raised before them. Whether or not the subject articles are privileged communications must first be established by the defense, which it failed to do at the level of the RTC and the CA. Even so, it shall be dealt with now, considering that an appeal in a criminal proceeding throws the whole case open for review.

Petitioner's knowledge of his reckless disregard for the truth of his defamatory statements in the Omnibus Motion for Reconsideration and To Disqualify can be gathered from his evasive and irrelevant answers to the queries of the judge:

COURT: You mentioned that you found some erroneous findings in the Resolution of the private complainant. But would that be a justification for you to alleged (sic) in your Omnibus Motion that she has infirmed intellectual prowess and stupid assumption.

[Petitioner] A: Yes, your Honor, it was something I would not want to put into writing.

COURT: But you did!

A: Yes, your Honor, because there was an allegation on (sic) attack of my person, the integrity she stated that there was altercation (sic) on the 8th to the 9th and again the imputation that I falsified the documents.

COURT: So, you have to get back at her, is that what you are saying?

A: No, your Honor, because I have to put it in writing the clarity of the facts not because I was very bad by that nature of the motion to the fact as I have said, these are factual, legal and jurisprudential basis, if the Honorable Investigating Prosecutor at the time to call me or to provide me a strength to say whether to be... but instead she, I would not to put it maliciously but she intent (sic) to put these intercalation of numbers, for me a young lawyer then may all know the integrity for something valued.

COURT: Were you justified to impute that she is stupid as she committed that for the first time?

A: Well, your Honor, if this is the only time that she have (sic) done that, I would have to say it could not be correct but if you will look in the other cases she handled cases that have (sic) filed with other people, specifically this one case, the case of Teresa Cabahug, watch, look in the Information she filed, there was an erroneous drawee bank, an erroneous address.

COURT: How is that related to this Omnibus Motion you filed alleging that she was stupid, malicious and has convoluted perceptions?

A: Your Honor, it shows that she will not give me a time and day in Court to seek clarification of matters. She could readily assume against me. You know what I was really asking then was for clarificatory questioning matters…

COURT: You have day in Court. You filed Omnibus Motion in Court, which the complainant is alleging to be malicious.

A: Your Honor, once again… Your Honor, it was filed in a judicial proceedings and there was no subject to warrant libel.[6]

There is no merit to petitioner's attempts to justify his defamatory statements in light of the errors committed by ACP Suñega-Lagman in the Resolution[7] dated July 28, 2004, dismissing his complaint for *estafa*, as follows:

> Complainant claims in his affidavit complaint that he is the lawful right holder over the lanzones harvest for crop year 2003 found in a parcel of land located in Bgy. San Miguel, San Pablo City; that he has never authorized respondent Nezer D. Belen, Sr. to sell nor dispose the lanzones harvest for crop year 2003 found in the entire portion of the property.
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> In his affidavit dated April 29, 2004, complainant Medel Belen attached the unnotarized Lease Agreement signed by Demetrio Belen, Sofronio Belen, Manolo Belen, Nezer Belen and Leyna Belen with conformity of herein complainant Medel Belen with the latter's notation "agreed harvest for 5 yrs. if equal or more than principal and 12% per annum, leasehold right shall terminate" signed by complainant himself. **It should be noted however that the period to exercise such right is handwritten which appears to be 20 years from 1983, while over the number 8 is handwritten number 9 to make it appear as 1993.**[8]
>
> In his reply affidavit dated May 6, 2004, complainant Medel Belen alleged that he leasehold right is good until 2013 as the 5-year total income from the lanzones crop was not more than or equal to the principal amount of ₱300,000 plus 12% annual interest. No evidence however was submitted in support of such allegation such as accounting of the 5 year total income.[9]
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> In addition, the lanzones fruits harvested for the crop year 2003 allegedly sold by respondent without complainant's authority is likewise the subject of the case filed before this office involving the same parties

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6 TSN (Testimony of Judge Medel Arnaldo B. Belen), November 25, 2008, folder of original TSN, pp. 45-48.

7 *Rollo*, p. 67.

8 Marked as Exhibit "3-A," Folder of Exhibits for the Prosecution. (Emphasis supplied)

9 Marked as Exhibit "3-B," *id.*

docketed as I.S. No. 03-1412 which was already dismissed as per resolution of the undersigned dated February 27, 2004.[10]

Henceforth, the instant case is hereby dismissed for lack of merit.[11]

A careful review of the questioned resolution would reveal nothing therein that directly accuses petitioner of falsification, or that the case was dismissed on the ground of *res judicata.* Apart from aptly pointing out that clarificatory hearing before the investigating prosecutor is discretionary, ACP Suñega-Lagman testified that there is nothing in the said resolution which accuses petitioner of falsification nor states that the complaint is being dismissed on the ground of *res judicata*, thus:

[Atty. Maximo, counsel for the defense]

Q: I am showing to you this Resolution that you rendered in the said case. In that Resolution, Madam Witness, you stated several reasons for the dismissal of the accused complaint against Nezer Belen, Sr. First, is because the lease started in 1983 as the number nine (9) was handwritten over the figure (8) in the lease contract, will you confirm that, Madam Witness?

x x x [Objection by Prosecutor Comilang was denied, and the Court allowed the witness to answer the question.]

x x x x

[ACP Suñega-Lagman]

A: It is stated here, as you noted a while ago, the period to exercise such right is handwritten which appears to be twelve (12) years from 1983, while over the number eight (8) is a handwritten number nine (9) to make it appear as 1993. That is what was stated, Sir.

Q: So you miss taking, Madam Witness, in your Resolution the intercalations of the number nine (9), over the number eight (8) in the lease contract. Are you implying that it was the accused who made the intercalation?

A: I am not implying anything, I just look at the document itself and I doubted the authenticity of the contract that was presented.

Q: So, am I correct to say that you do not know, whether or not it was the accused who made this intercalation?

A: I cannot say for certain.[12]

Fourth, petitioner argues that the Omnibus Motion containing acerbic words was filed in self-defense of his character, which was supposedly stained

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10 Marked as Exhibit "3-C," *id.*

11 Exhibit "C," *id.*

12 TSN (Testimony of Pros. Ma. Victoria Suñega-Lagman), November 27, 2007, Folder of Original TSN, pp. 43-45.

by the prosecutor-complainant's imputation that he committed the crime of falsification of private document, without provocation and in complete absence of opportunity to be heard. Petitioner cites *People v. Chua Hiong*[13] to justify the theory that a person libel is justified to hit back with another libel, thus: "Once the aspersion is cast, the sting clings and the person thus defamed may avail himself of all necessary means to shake it off. He may hit back with another which, if adequate, will be justified."[14]

Petitioner's view fails to persuade.

It is well settled that unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. As the party invoking self-defense, petitioner must prove unlawful aggression on the part of ACP Suñega-Lagman, which prompted him to defend himself thorough scurrilous remarks on her character as a public officer and an individual. As the investigating prosecutor of the case, ACP Suñega-Lagman enjoys the presumption of regularity in the performance of her official duties when she issued a Resolution dismissing his estafa complaint for lack of evidence. Petitioner failed to overturn this disputable presumption, and to prove unlawful aggression on the part of ACP Suñega-Lagman.

Besides, ACP Suñega-Lagman's observation on the handwritten notations in the questioned leasehold agreement—for which petitioner felt being accused of falsification—is contained in a resolution of a preliminary investigation and is indeed relevant to the dismissal of his complaint for estafa. Hence, even if such observation is defamatory, it falls under the principle of absolute privileged communication, and it cannot be deemed as libelous.

Petitioner would also do well to bear in mind that not because a person has called another a shameless, good for nothing animal, that person insulted would have the right, to return the insult by calling him murderer, criminal, gangster, prostitute, etc. under the mantle of self-defense.[15] To make a sweeping statement that every time a person is insulted or defamed, he has the right to return the insult in an unbridled manner, on the ground of self-defense, is to permit him to take the law into his own hands.[16]

In *People v. Royo,*[17] the Court ruled that the answering of a libel, may be justified if it is adequate; and it is inadequate when the answer is unnecessarily libelous. The words and expressions uttered by the appellants to the complainant were not adequate because they were unnecessarily

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13 51 O.G. 1932.
14 *Id.*
15 *People v. Royo*, 53 O.G. 8618.
16 *Id.*
17 *Id.*

libelous. The complainant, in a fit of jealousy, called appellants, pimps, thieves (probably of affection) and paramours of her husband. The appellants let loose a barrage of insults upon the complainant, imputing immorality, unchastity, dishonesty and criminality which were not fair answers to the complainant's lambasts and were absolutely unrelated to her imputation upon them. Moreover, in libel or oral defamation, the accused to be exonerated should show that the slanderous words uttered by him, are true and made with good intentions and justifiable motives. This the appellants failed to do. It may be true, that once the aspersion is cast its sting clings, but will another libel shake off such sting? Will the hitting back undo what had been done? The Court took it that if a person insulted hits back, he wants to retaliate or revenge; and retaliation or vindictiveness can hardly be a basis of self-defense. When aggression is a retaliation for an insult, injury or threat, it cannot be considered as a defense but as a punishment inflicted on the author of the provocation, and in such case the most that courts can do is to consider the same as an extenuating circumstance, but never as a cause of complete exemption.

In *People v. Pelayo, Jr.*, [18] the Court held that where the defender goes beyond mere explaining his side and/or repairing, minimizing or removing the effect of the damage by hitting back with equally if not more scurrilous remarks against the one who first made the imputation, his retaliation becomes entirely an independent act of his own of which he may stand to answer the consequences. The defense will lie only where the defendant makes a defense of the imputation previously made against him by another without, in turn, making slanderous remarks against the latter unless the remarks are necessary for his explanation or defense. In other words, unless, in defending himself it is necessary for him to in turn make scurrilous remarks or language against the person who has defamed him, the defendant is not justified to hit back with slanderous words that will subject him to criminal prosecution for libel or slander. If it is true that on a previous occasion the complainant had imputed to the defendant that he, the latter, was receiving money from gambling operators, the defendant was not licensed to make the same imputation or accusation because to do that is not an act of defense or one constitutive of an element thereof, but an aggression itself. Hitting back with words of the same derogatory nature and degree does not repel the attack made against one's honor. To repel a defamatory attack, the defendant may make an explanation of the defamation and it is only in explaining where, if necessary, he may use scurrilous and slanderous remarks that he may be allowed to do so without placing himself under criminal prosecution.

Here, petitioner failed to show that his defamatory statements were justified or necessary to explain any defamatory accusation, because there is, in the first place, neither a provocation nor a defamatory imputation of falsification that was made against him by ACP Suñega-Lagman in the resolution dismissing his estafa complaint.

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[18] *People v. Pelayo, Jr.*, 64 O.G. 1991.

WHEREFORE, the Motion for Reconsideration and Supplemental Motion for Reconsideration are **DENIED** for lack of merit.

SO ORDERED." *(Reyes, A., Jr., J., on official business)*

Very truly yours,

TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
17 JAN 2020

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