

## THIRD DIVISION

[ G.R. No. 194134, February 01, 2016 ]

**JOSE ROMULO L. FRANCISCO, PETITIONER, VS. LOYOLA PLANS CONSOLIDATED INC., JESUSA CONCEPCION AND GERARDO B. MONZON, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before this Court is a petition for review on *certiorari* dated November 6, 2010 of petitioner Jose Romulo L. Francisco assailing the Resolution<sup>[1]</sup> dated February 19, 2010 and Resolution<sup>[2]</sup> dated October 12, 2010 of the Court of Appeals (CA) which ruled that it did not acquire jurisdiction over the person of private respondent Gerardo B. Monzon thereby dismissing the case with respect to Monzon.

The facts are as follows:

On November 8, 1993, respondent Loyola Plans Consolidated, Inc. (*Loyola*) hired petitioner Jose Romulo Francisco as National Training Officer on probationary basis with a salary of P6,600.00. On May 9, 1994, petitioner became a regular employee.<sup>[3]</sup> Loyola added the Pasay-Parañaque Area Office as an extension sales office to petitioner's Makati Marketing, Group on January 2, 1996.<sup>[4]</sup> In January 1997, petitioner was paid P15,400.00 as Manager of the Makati Marketing Group.<sup>[5]</sup>

On July 1, 1997, petitioner filed a complaint for illegal dismissal against respondent Loyola and individual respondents Loyola's President and Chief Executive Officer Jesusa P. Concepcion and Loyola's Vice-President for Marketing and Sales Gerardo B. Monzon.<sup>[6]</sup>

In his position paper, petitioner alleged that Monzon, respondent's Vice-President for Marketing and Sales, deliberately falsified a resignation letter<sup>[7]</sup> dated March 24, 1997 purportedly signed by petitioner.<sup>[8]</sup> Petitioner received the same on April 1, 1997.<sup>[9]</sup> Two memoranda, both dated March 25, 1997, instructing petitioner to relinquish the Loyola Makati Marketing Group and Pasay-Parañaque Area Office, and clearance forms to be filled-out by petitioner accompanied the alleged resignation letter.<sup>[10]</sup>

In a letter<sup>[11]</sup> dated April 14, 1997 addressed to Monzon, petitioner, through his counsel, protested the alleged illegal termination. In the said letter, petitioner accused Monzon of his criminal intentions prior to the sham acceptance of his falsified letter.<sup>[12]</sup> Petitioner also demanded Monzon to reinstate him with backwages within five days from the receipt of the said letter; otherwise, its liabilities will be increased from the suit that he would file against Loyola and

Monzon.<sup>[13]</sup> Petitioner informed Monzon that he should personally take the vehicle in petitioner's possession.<sup>[14]</sup>

When respondents ignored his demands, petitioner filed a case of falsification of private document against Monzon before the Office of the City Prosecutor of Makati City.<sup>[15]</sup>

On the other hand, Loyola claimed that petitioner voluntarily resigned from his post, in its position paper, Loyola alleged that petitioner showed dismal performance during his stint as Marketing Manager from May 1996 to December 1996, with his actual sales below his projected forecast.<sup>[16]</sup> In January 1997, Monzon called petitioner's attention regarding his poor sales performance from June to December 1996.<sup>[17]</sup> Petitioner was given a chance to prove himself in attaining all the sales, collection and organization forecasts from January to March 1997, however, it was also agreed upon that petitioner would tender his irrevocable resignation should he fail to do so.<sup>[18]</sup>

Hence, when the company records showed that petitioner miserably failed to reach his goals, petitioner tendered his irrevocable resignation on March 24, 1997, which Monzon accepted on the same day.<sup>[19]</sup> Loyola alleged that there was no illegal dismissal since petitioner voluntarily resigned.

The Labor Arbiter (LA) issued an Order<sup>[20]</sup> dated April 24, 1997 that the resolution of the illegal dismissal case should wait for the outcome of the criminal case filed against Monzon in Branch 66, Metropolitan Trial Court (*MeTC*) of Makati.<sup>[21]</sup>

On June 24, 1998, petitioner filed a Motion for Reconsideration against the Order issued by the LA praying that the illegal dismissal case should proceed independently from the criminal case against Monzon.<sup>[22]</sup>

In a Resolution<sup>[23]</sup> dated June 22, 1999, the National Labor Relations Commission (*NLRC*), which treated the Motion for Reconsideration as an appeal, ruled that the case should be deferred pending the criminal case.<sup>[24]</sup> The *NLRC* ratiocinated that the determination whether petitioner was illegally dismissed is dependent upon the resolution of the criminal case involving the alleged forgery of the resignation letter.<sup>[25]</sup>

In a Decision<sup>[26]</sup> dated February 10, 2004, the *MeTC* found Monzon guilty beyond reasonable doubt of the crime of Falsification of Private Document under Article 172, paragraph 2 of the Revised Penal Code.<sup>[27]</sup> The *MeTC* also held that damage had been caused to petitioner since he was terminated from his job causing financial constraints as a consequence of the forgery of the resignation letter.<sup>[28]</sup>

On August 10, 2004, the Regional Trial Court (*RTC*), Branch 132 of Makati City affirmed the conviction of Monzon.<sup>[29]</sup> Likewise, the CA, in its Decision<sup>[30]</sup> dated March 18, 2005, affirmed the conviction of Monzon finding it more probable that he made the spurious resignation letter and made it appear that petitioner intended to resign from work than petitioner resigning from his job despite the difficulty in

finding a stable job.<sup>[31]</sup> In a Resolution<sup>[32]</sup> dated November 14, 2005, this Court dismissed the petition for *certiorari* filed by Monzon for being the wrong remedy; for failing to state the material dates, and for a defective or insufficient certification against forum shopping.<sup>[33]</sup>

In its Decision<sup>[34]</sup> dated September 5, 2007, the LA ruled for the petitioner. It held that the final conviction of Monzon in the falsification charges simultaneously made the illegal termination of petitioner with finality invoking the doctrines of *res judicata*, finality of judgment and estoppel by judgment.<sup>[35]</sup> The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding [petitioner] to have been illegally dismissed and in bad faith by respondents and ordering respondents Loyola Plans Inc., its President and Chief Executive Officer Jesusa P. Concepcion, and Gerardo B. Monzon, jointly and severally

1. To reinstate [petitioner] to his former position without loss of seniority rights and benefits; and the reinstatement immediately executory upon receipt of this Decision by the respondents and even pending appeal;

2. To submit a report compliance whether [petitioner] was physically reinstated or simply enrolled in the company's payroll within ten (10) calendar days from receipt of this Decision;

3. To pay [petitioner]'s full backwages starting from date of his illegal dismissal on 15 April 1997, plus 13<sup>th</sup> month pay from 1 January 1997, until his actual reinstatement:

A. Backwages

4/15/97-

9/5/07 = 125

months

$P15,400.00 \times 125 \text{ mos.} = P1,925,000.00$

13<sup>th</sup> Month

Pay

$P1,925,000.00 - 12 = 160,416.66$

SILP

$P592.30 \times 5 \times \frac{125-12}{12} = 30,848.95$

B. 13<sup>th</sup> Month

Pay

1/1/97-

4/14/97

= -3.43 mos.

P15,400.00 x =4,401.83  
3.43 - 12

P2,120,667.44

4. To pay [petitioner] moral and exemplary damages in the respective amount of P1,000,000.00 each;

5. To pay [petitioner] 10% of the total awards as attorney's fees or in the amount of P212,066.74.

SO ORDERED.<sup>[36]</sup>

Maintaining that the personal acts of Monzon should not be taken against respondents Loyola and Concepcion, respondents elevated the case before the NLRC. In its Resolution<sup>[37]</sup> dated April 30, 2008, the NLRC affirmed with modifications the ruling of the LA. The decretal part of the decision reads:

WHEREFORE, foregoing premises considered, the Decision dated September 05, 2007, is hereby MODIFIED. The award of backwages should be computed from the finality of the judgment of Conviction of individual respondent Gerardo Monzon up to his actual reinstatement. The award of moral and exemplary damages is DELETED and the award of attorney's fees based on the total monetary award in this Decision, is hereby maintained.

SO ORDERED.<sup>[38]</sup>

Aggrieved, petitioner filed a petition for *certiorari* before the CA seeking the nullification of the Resolution of the NLRC. Petitioner asseverates that the NLRC has no jurisdiction to reverse its own final Resolution dated June 22, 1999 which affirmed the decision of the LA to hold the proceedings and await the outcome of the criminal case against Monzon, and to modify the final decision of this Court in the same case.<sup>[39]</sup> Petitioner insists that the award of damages of the LA has become final due to respondents' forum shopping.<sup>[40]</sup>

In a Resolution<sup>[41]</sup> dated October 14, 2008, the CA ordered respondents to file their comment on the petition for *certiorari* within ten (10) days from notice.<sup>[42]</sup>

On October 28, 2008, respondents' counsel filed a Manifestation and Motion<sup>[43]</sup> denying any legal relations with Monzon. It averred that Monzon has ceased to be in the employ of Loyola and had not made any communication with Loyola or its counsel.<sup>[44]</sup>

However, the CA, in a Resolution<sup>[45]</sup> dated April 17, 2009, denied the said motion. It held that without any withdrawal of counsel filed by either Monzon or Atty. Josabeth Alonso before the CA, the latter's legal representation of Monzon subsists.<sup>[46]</sup> It also ruled that the manifestation and motion on October 28, 2008 of Alonso and Associates denying its legal relations with Monzon is not enough, to sever its representation with him.<sup>[47]</sup> The CA ordered the respondents to file their comment within ten (10) days from the receipt of notice.<sup>[48]</sup>

Thereafter, respondents' counsel filed an *Ex Parte* Motion dated May 8, 2009 moving to withdraw as counsel of individual respondent Monzon.<sup>[49]</sup> it avowed that it could no longer make a proper and full representation of Monzon, since the latter ceased to communicate with Loyola and its counsel when the former resigned from his post.<sup>[50]</sup>

The CA granted the motion in its Minute Resolution<sup>[51]</sup> dated July 21, 2009 and ordered that Monzon should be furnished with the copy of the said resolution for compliance.<sup>[52]</sup>

In a Resolution<sup>[53]</sup> dated February 19, 2010, the CA dismissed the case with respect to Monzon. It held that the CA did not acquire jurisdiction over the person of Monzon since the copy of the Resolution dated July 21, 2009 mailed to Monzon's address of record was returned unclaimed.<sup>[54]</sup>

The CA denied the Motion for Reconsideration filed by petitioner in its Resolution<sup>[55]</sup> dated October 12, 2010. The CA ruled that "while Section 26<sup>[56]</sup> of Rule 138 prescribes the usual means by which an attorney may withdraw as counsel for a client, there are instances where the court may be justified in relieving a lawyer from continuing his appearance in action or proceeding, without hearing the client, like when a situation develops where the client stops having any contact with the lawyer, who is thereby left without the usual means which are indispensable in the successful or proper defense of the client's cause."<sup>[57]</sup>

Hence, petitioner filed the instant petition for review on *certiorari* before this Court raising the following issues:

1. The questioned dismissal is against the Court of Appeals final resolution dated April 17, 2009.
2. Alonso and Associates fraudulently provided a sham address causing the failure of service to Monzon.
3. The questioned dismissal is against the Supreme Court's final resolution of the criminal case against Monzon.
4. Respondents judicially admitted illegal dismissal when they accepted the resignation letter in good faith which later on was proven to be falsified.
5. The Labor Arbiter's awards have become final and executory.
6. Respondents deliberately intended to render the final Supreme Court resolution ineffectual.
7. Respondents are solidarity liable to pay interest.

Petitioner essentially assails the Resolution dated February 19, 2010 of the CA which dismissed the case with respect to individual respondent Monzon, and the Resolution dated October 12, 2010 which denied his motion for reconsideration against the