

FIRST DIVISION

[G.R. No. 125865, January 28, 2000]

JEFFREY LIANG (HUEFENG), PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Petitioner is an economist working with the Asian Development Bank (ADB). Sometime in 1994, for allegedly uttering defamatory words against fellow ADB worker Joyce Cabal, he was charged before the Metropolitan Trial Court (MeTC) of Mandaluyong City with two counts of grave oral defamation docketed as Criminal Cases Nos. 53170 and 53171. Petitioner was arrested by virtue of a warrant issued by the MeTC. After fixing petitioner's bail at P2,400.00 per criminal charge, the MeTC released him to the custody of the Security Officer of ADB. The next day, the MeTC judge received an "office of protocol" from the Department of Foreign Affairs (DFA) stating that petitioner is covered by immunity from legal process under Section 45 of the Agreement between the ADB and the Philippine Government regarding the Headquarters of the ADB (hereinafter Agreement) in the country. Based on the said protocol communication that petitioner is immune from suit, the MeTC judge without notice to the prosecution dismissed the two criminal cases. The latter filed a motion for reconsideration which was opposed by the DFA. When its motion was denied, the prosecution filed a petition for certiorari and mandamus with the Regional Trial Court (RTC) of Pasig City which set aside the MeTC rulings and ordered the latter court to enforce the warrant of arrest it earlier issued. After the motion for reconsideration was denied, petitioner elevated the case to this Court via a petition for review arguing that he is covered by immunity under the Agreement and that no preliminary investigation was held before the criminal cases were filed in court.

The petition is not impressed with merit.

First, courts cannot blindly adhere and take on its face the communication from the DFA that petitioner is covered by any immunity. The DFA's determination that a certain person is covered by immunity is only preliminary which has no binding effect in courts. In receiving *ex-parte* the DFA's advice and in *motu proprio* dismissing the two criminal cases without notice to the prosecution, the latter's right to due process was violated. It should be noted that due process is a right of the accused as much as it is of the prosecution. The needed inquiry in what capacity petitioner was acting at the time of the alleged utterances requires for its resolution evidentiary basis that has yet to be presented at the proper time.^[1] At any rate, it has been ruled that the mere invocation of the immunity clause does not *ipso facto* result in the dropping of the charges.^[2]

Second, under Section 45 of the Agreement which provides: