

SECOND DIVISION

[G.R. No. 108946, January 28, 1999]

**FRANCISCO G. JOAQUIN, JR., AND BJ PRODUCTIONS, INC.,
PETITIONERS, VS. FRANKLIN DRILON GABRIEL ZOSA, WILLIAM
ESPOSO, FELIPE MEDINA, JR., AND CASEY FRANCISCO,
RESPONDENTS**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari. Petitioners seek to annul the resolution of the Department of Justice, dated August 12, 1992, in Criminal Case No. Q-92-27854, entitled "Gabriel Zosa, et al. v. City Prosecutor of Quezon City and Francisco Joaquin, Jr.," and its resolution, dated December 3, 1992, denying petitioner Joaquin's motion for reconsideration.

Petitioner BJ Productions, Inc. (BJPI) is the holder/grantee of Certificate of Copyright No. M922, dated January 28, 1971, of *Rhoda and Me*, a dating game show aired from 1970 to 1977.

On June 28, 1973, petitioner BJPI submitted to the National Library an addendum to its certificate of copyright specifying the show's format and style of presentation.

On July 14, 1991, while watching television, petitioner Francisco Joaquin, Jr., president of BJPI, saw on RPN Channel 9 an episode of *It's a Date*, which was produced by IXL Productions, Inc. (IXL). On July 18, 1991, he wrote a letter to private respondent Gabriel M. Zosa, president and general manager of IXL, informing Zosa that BJPI had a copyright to *Rhoda and Me* and demanding that IXL discontinue airing *It's a Date*.

In a letter, dated July 19, 1991, private respondent Zosa apologized to petitioner Joaquin and requested a meeting to discuss a possible settlement. IXL, however, continued airing *It's a Date*, prompting petitioner Joaquin to send a second letter on July 25, 1991 in which he reiterated his demand and warned that, if IXL did not comply, he would endorse the matter to his attorneys for proper legal action.

Meanwhile, private respondent Zosa sought to register IXL's copyright to the first episode of *It's a Date* for which it was issued by the National Library a certificate of copyright on August 14, 1991.

Upon complaint of petitioners, an information for violation of P.D. No. 49 was filed against private respondent Zosa together with certain officers of RPN Channel 9, namely, William Esposito, Felipe Medina, and Casey Francisco, in the Regional Trial Court of Quezon City where it was docketed as Criminal Case No. 92-27854 and assigned to Branch 104 thereof. However, private respondent Zosa sought a review

of the resolution of the Assistant City Prosecutor before the Department of Justice.

On August 12, 1992, respondent Secretary of Justice Franklin M. Drilon reversed the Assistant City Prosecutor's findings and directed him to move for the dismissal of the case against private respondents. ^[1]

Petitioner Joaquin filed a motion for reconsideration, but his motion was denied by respondent Secretary of Justice on December 3, 1992. Hence, this petition. Petitioners contend that:

1. The public respondent gravely abused his discretion amounting to lack of jurisdiction when he invoked non-presentation of the master tape as being fatal to the existence of probable cause to prove infringement, despite the fact that private respondents never raised the same as a controverted issue.
2. The public respondent gravely abused his discretion amounting to lack of jurisdiction when he arrogated unto himself the determination of what is copyrightable - an issue which is exclusively within the jurisdiction of the regional trial court to assess in a proper proceeding.

Both public and private respondents maintain that petitioners failed to establish the existence of probable cause due to their failure to present the copyrighted master videotape of *Rhoda and Me*. They contend that petitioner BJPI's copyright covers only a specific episode of *Rhoda and Me* and that the formats or concepts of dating game shows are not covered by copyright protection under P. D. No. 49.

Non-Assignment of Error

Petitioners claim that their failure to submit the copyrighted master videotape of the television show *Rhoda and Me* was not raised in issue by private respondents during the preliminary investigation and, therefore, it was error for the Secretary of Justice to reverse the investigating prosecutor's finding of probable cause on this ground.

A preliminary investigation falls under the authority of the state prosecutor who is given by law the power to direct and control criminal actions.^[2] He is, however, subject to the control of the Secretary of Justice. Thus, Rule 112, §4 of the Revised Rules of Criminal Procedure, provides:

SEC. 4. *Duty of investigating fiscal.* - If the investigating fiscal finds cause to hold the respondent for trial, he shall prepare the resolution and corresponding information. He shall certify under oath that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend dismissal of the complaint.

In either case, he shall forward the records of the case to the provincial or city fiscal or chief state prosecutor within five (5) days from his resolution. The latter shall take appropriate action thereon within ten (10) days from receipt thereof, immediately informing the parties of said action.

No complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor.

Where the investigating assistant fiscal recommends the dismissal of the case but his findings are reversed by the provincial or city fiscal or chief state prosecutor on the ground that a probable cause exists, the latter may, by himself, file the corresponding information against the respondent or direct any other assistant fiscal or state prosecutor to do so, without conducting another preliminary investigation.

If upon petition by a proper party, the Secretary of Justice reverses the resolution of the provincial or city fiscal or chief state prosecutor, he shall direct the fiscal concerned to file the corresponding information without conducting another preliminary investigation or to dismiss or move for dismissal of the complaint or information.

In reviewing resolutions of prosecutors, the Secretary of Justice is not precluded from considering errors, although unassigned, for the purpose of determining whether there is probable cause for filing cases in court. He must make his own finding of probable cause and is not confined to the issues raised by the parties during preliminary investigation. Moreover, his findings are not subject to review unless shown to have been made with grave abuse.

Opinion of the Secretary of Justice

Petitioners contend, however, that the determination of the question whether the format or mechanics of a show is entitled to copyright protection is for the court, and not the Secretary of Justice, to make. They assail the following portion of the resolution of the respondent Secretary of Justice:

[T]he essence of copyright infringement is the copying, in whole or in part, of copyrightable materials as defined and enumerated in Section 2 of PD. No. 49. Apart from the manner in which it is actually expressed, however, the idea of a dating game show is, in the opinion of this Office, a non-copyrightable material. Ideas, concepts, formats, or schemes in their abstract form clearly do not fall within the class of works or materials susceptible of copyright registration as provided in PD. No. 49.

[3] (Emphasis added.)

It is indeed true that the question whether the format or mechanics of petitioners' television show is entitled to copyright protection is a legal question for the court to make. This does not, however, preclude respondent Secretary of Justice from making a preliminary determination of this question in resolving whether there is probable cause for filing the case in court. In doing so in this case, he did not commit any grave error.

Presentation of Master Tape

Petitioners claim that respondent Secretary of Justice gravely abused his discretion in ruling that the master videotape should have been presented in order to determine whether there was probable cause for copyright infringement. They contend that *20th Century Fox Film Corporation v. Court of Appeals*,^[4] on which respondent Secretary of Justice relied in reversing the resolution of the investigating prosecutor, is inapplicable to the case at bar because in the present case, the parties presented sufficient evidence which clearly establish "linkages between the copyrighted show '*Rhoda and Me* ' and the infringing TV show '*It's a Date*.'"^[5]

The case of *20th Century Fox Film Corporation* involved raids conducted on various videotape outlets allegedly selling or renting out "pirated" videotapes. The trial court found that the affidavits of NBI agents, given in support of the application for the search warrant, were insufficient without the master tape. Accordingly, the trial court lifted the search warrants it had previously issued against the defendants. On petition for review, this Court sustained the action of the trial court and ruled:^[6]

The presentation of the master tapes of the copyrighted films from which the pirated films were allegedly copied, was necessary for the validity of search warrants against those who have in their possession the pirated films. The petitioner's argument to the effect that the presentation of the master tapes at the time of application may not be necessary as these would be merely evidentiary in nature and not determinative of whether or not a probable cause exists to justify the issuance of the search warrants is not meritorious. The court cannot presume that duplicate or copied tapes were necessarily reproduced from master tapes that it owns.

The application for search warrants was directed against video tape outlets which allegedly were engaged in the unauthorized sale and renting out of copyrighted films belonging to the petitioner pursuant to P.D. 49.

The essence of a copyright infringement is the similarity or at least substantial similarity of the purported pirated works to the copyrighted work. Hence, the applicant must present to the court the copyrighted films to compare them with the purchased evidence of the video tapes allegedly pirated to determine whether the latter is an unauthorized reproduction of the former. This linkage of the copyrighted films to the pirated films must be established to satisfy the requirements of probable cause. Mere allegations as to the existence of the copyrighted films cannot serve as basis for the issuance of a search warrant.

This ruling was qualified in the later case of *Columbia Pictures, Inc. v. Court of Appeals*^[7] in which it was held:

In fine, the supposed *pronunciamento* in said case regarding the necessity for the presentation of the master tapes of the copyrighted films for the validity of search warrants should at most be understood to merely serve as a guidepost in determining the existence of probable

cause in copyright infringement cases *where there is doubt as to the true nexus between the master tape and the pirated copies*. An objective and careful reading of the decision in said case could lead to no other conclusion than that said directive was hardly intended to be a sweeping and inflexible requirement in all or similar copyright infringement cases. .

. . [8]

In the case at bar, during the preliminary investigation, petitioners and private respondents presented written descriptions of the formats of their respective television shows, on the basis of which the investigating prosecutor ruled:

As may [be] gleaned from the evidence on record, the substance of the television productions complainant's "RHODA AND ME" and Zosa's "IT'S A DATE" is that two matches are made between a male and a female, both single, and the two couples are treated to a night or two of dining and/or dancing at the expense of the show. The major concepts of both shows is the same. Any difference appear mere variations of the major concepts.

That there is an infringement on the copyright of the show "RHODA AND ME" both in content and in the execution of the video presentation are established because respondent's "IT'S A DATE" is practically an exact copy of complainant's "RHODA AND ME" because of substantial similarities as follows, to wit:

"RHODA AND ME"		"IT'S A DATE"	
Set I		Set I	
a.	Unmarried participant of one gender (searcher) appears on one side of a divider, while three (3) unmarried participants of the other gender are on the other side of the divider. This arrangement is done to ensure that the searcher does not see the searchees.	a.	same
b.	Searcher asks a question to be answered by each of the searchees. The purpose is to determine who among the searchees is the most compatible with the searcher.	b.	same
c.	Searcher speculates on the match to the searchee.	c.	same
d.	Selection is made by the	d.	Selection is