

NARCISO ALVAREZ, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF TAYABAS AND THE ANTI-USURY BOARD, RESPONDENTS.

G. R. No. L-45358. January 29, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioner asks that the warrant of June 3, 1936, issued by the Court of First Instance of Tayabas, ordering the search of his house and the seizure, at any time of the day or night, of certain accounting books, documents and papers belonging to him in his residence situated in Infanta, Province of Tayabas, as well as the order of a later date, authorizing the agents of the Anti-Usury Board to retain the articles seized, be declared illegal and set aside, and prays that all the articles in question be returned to him.

On the date above-mentioned, the chief of the secret service of the Anti-Usury Board, of the Department of Justice, presented to Judge Eduardo Gutierrez David then presiding over the Court of First Instance of Tayabas, an affidavit alleging that according to reliable information, the petitioner kept in his house in Infanta, Tayabas, books, documents, receipts, lists, chits and other papers used by him in connection with his activities as a money-lender, charging usurious rates of interest in violation of the law. In his oath at the end of the affidavit, the chief of the secret service stated that his answers to the questions were correct to the best of his knowledge and belief. He did not swear to the truth of his statements upon his own knowledge of the facts but upon the information received by him from a reliable person. Upon the affidavit in question the judge, on said date, issued the warrant which is the subject matter of the petition, ordering the search of the petitioner's house at any time of the day or night, the seizure of the books and documents above-mentioned and the immediate delivery thereof to him to be disposed of in accordance with the law. With said warrant, several agents of the Anti-Usury Board entered the petitioner's store and residence at seven o'clock on the night of June 4, 1936, and seized and took possession of the following articles: internal revenue licenses for the years 1933 to 1936, one ledger, two journals, two cashbooks, nine order books, four notebooks, four check stubs, two memorandums, three bankbooks, two contracts, four stubs, forty-eight stubs of purchases of copra, two inventories, two bundles of bills of lading, one bundle of credit receipts, one bundle of stubs of purchases of copra, two packages of correspondence, one receipt book belonging to Luis Fernandez, fourteen bundles of invoices and other papers, many documents and loan contracts with security and promissory notes, 504 chits, promissory notes and stubs of used checks of the Hongkong & Shanghai Banking Corporation. The search for and seizure of said articles were made with the opposition of the petitioner who stated his protest below the inventories on the ground that the agents seized even the originals of the documents. As the articles had not been brought immediately to the judge who issued the search warrant, the petitioner, through his attorney, filed a motion on June 8, 1936, praying that the agent Emilio L. Siongco, or any other agent, be ordered immediately to deposit all the seized articles in the office of the clerk of court and that said agent be declared guilty of contempt for having disobeyed the order of the court. On said date the court issued an order directing Emilio L. Siongco to deposit all the articles seized within twenty-four

hours from the receipt of notice thereof and giving him a period of five (5) days within which to show cause why he should not be punished for contempt of court. On June 10th, Attorney Arsenio Rodriguez, representing the Anti-Usury Board, filed a motion praying that the order of the 8th of said month be set aside and that the Anti-Usury Board be authorized to retain the articles seized for a period of thirty (30) days for the necessary investigation. The attorney for the petitioner, on June 20th, filed another motion alleging that, notwithstanding the order of the 8th of said month, the officials of the Anti-Usury Board had failed to deposit the articles seized by them and praying that a search warrant be issued, that the sheriff be ordered to take all the articles into his custody and deposit them in the clerk's office, and that the officials of the Anti-Usury Board be punished for contempt of court. Said attorney, on June 24th, filed an ex parte petition alleging that while agent Emilio L. Siongco had deposited some documents and papers in the office of the clerk of court, he had so far failed to file an inventory duly verified by oath, of all the documents seized by him, to return the search warrant together with the affidavit presented in support thereof, or to present the report of the proceedings taken by him; and prayed that said agent be directed to file the documents in question immediately. On the 25th of said month the court issued an order requiring agent Emilio L. Siongco forthwith to file the search warrant and the affidavit in the court, together with the proceedings taken by him, and to present an inventory duly verified by oath of all the articles seized. On July 2d of said year, the attorney for the petitioner filed another petition alleging that the search warrant issued was illegal and that it had not yet been returned to date together with the proceedings taken in connection therewith, and praying that said warrant be cancelled, that an order be issued directing the return of all the articles seized to the petitioner, that the agent who seized them be declared guilty of contempt of court, and that charges be filed against him for abuse of authority. On September 10, 1936, the court issued an order holding: that the search warrant was obtained and issued in accordance with the law, that it had been duly complied with and, consequently, should not be cancelled, and that agent Emilio L. Siongco did not commit any contempt of court and must, therefore, be exonerated, and ordering the chief of the Anti-Usury Board in Manila to show cause, if any, within the unextendible period of two (2) days from the date of notice of said order, why all the articles seized appearing in the inventory, Exhibit 1, should not be returned to the petitioner. The assistant chief of the Anti-Usury Board of the Department of Justice filed a motion praying, for the reasons stated therein, that the articles seized be ordered retained for the purpose of conducting an investigation of the violation of the Anti-Usury Law committed by the petitioner. In view of the opposition of the attorney for the petitioner, the court, on September 25th, issued an order requiring the Anti-Usury Board to specify the time needed by it to examine the documents and papers seized and which of them should be retained, granting it a period of five (5) days for said purpose. On the 30th of said month the assistant chief of the Anti-Usury Board filed a motion praying that he be granted ten (10) days to comply with the order of September 25th and that the clerk of court be ordered to return to him all the documents and papers together with the inventory thereof. The court, in an order of October 2d of said year, granted him the additional period of ten (10) days and ordered the clerk of court to send him a copy of the inventory. On October 10th, said official again filed another motion alleging that he needed sixty (60) days to examine the documents and papers seized, which are designated on pages 1 to 4 of the inventory by Nos. 5, 10, 16, 23, 25, 26, 27, 30, 81, 34, 36, 37, 38, 39, 40, 41, 42, 43 and 45, and praying that he be granted said period of sixty (60) days. In an order of October 16th, the court granted him the period of sixty (60) days to investigate said nineteen (19) documents. The petitioner alleges, and it is not denied by the respondents, that these nineteen (19) documents continue in the possession of the court, the rest having been returned to said petitioner.

I. A search warrant is an order in writing, issued in the name of the People of the Philippine Islands, signed by a judge or a justice of the peace, and directed to a peace officer, commanding him to search for personal property and bring it before the court (section 95, General Orders, No. 58, as amended by section 6 of Act No. 2886). Of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books, and papers from the inspection

and scrutiny of others (*In re Pacific Railway Commission*, 32 Fed., 241; *Interstate Commerce Commn. vs. Brimson*, 38 Law. ed., 1047; *Boyd vs. U. S.*, 29 Law. ed., 746; *Carroll vs. U. S.*, 69 Law. ed., 543, 549). While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government (*People vs. Elias*, 147 N. E., 472).

II. As the protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the court, these constitutional guaranties should be given a liberal construction or a strict construction in favor of the individual, to prevent stealthy encroachment upon, or gradual depreciation of, the rights secured by them (*State vs. Custer County*, 198 Pac, 362; *State vs. McDaniel*, 231 Pac, 965; 237 Pac, 373). Since the proceeding is a drastic one, it is the general rule that statutes authorizing searches and seizures or search warrants must be strictly construed (*Rose vs. St. Clair*, 28 Fed. [2d], 189; *Leonard vs. U. S.*, 6 Fed. [2d], 353; *Perry vs. U. S.*, 14 Fed. [2d], 88; *Cofer vs. State*, 118 So., 613).

III. The petitioner claims that the search warrant issued by the court is illegal because it has been based upon the affidavit of agent Mariano G. Almeda in whose oath he declared that he had no personal knowledge of the facts which were to serve as a basis for the issuance of the warrant but that he had knowledge thereof through mere information secured from a person whom he considered reliable. To the question "What are your reasons for applying for this search warrant", appearing in the affidavit, the agent answered: "It has been reported to me by a person whom I consider to be reliable that there are being kept in said premises, books, documents, receipts, lists, chits, and other papers used by him in connection with his activities as a money-lender, charging a usurious rate of interest, in violation of the law" and in attesting the truth of his statements contained in the affidavit, the said agent stated that he found them to be correct and true to the best of his knowledge and belief.

Section 1, paragraph 3, of Article III of the Constitution, relative to the bill of rights, provides that "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." Section 97 of General Orders, No. 58 provides that "A search warrant shall not issue except for probable cause and upon application supported by oath particularly describing the place to be searched and the person or thing to be seized." It will be noted that both provisions require that there be not only probable cause before the issuance of a search warrant but that the search warrant must be based upon an application supported by oath of the applicant and the witnesses he may produce. In its broadest sense, an oath includes any form of attestation by which a party signifies that he is bound in conscience to perform an act faithfully and truthfully; and it is sometimes defined as an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God (*Bouvier's Law Dictionary*; *State vs. Jackson*, 137 N. W., 1034; *In re Sage*, 24 Oh. Cir. Ct. [N. S.], 7; *Pumphrey vs. State*, 122 N. W., 19; *Priest vs. State*, 6 N. W., 468; *State vs. Jones*, 154 Pac, 378; *Atwood vs. State*, 111 So., 865). The oath required must refer to the truth of the facts within the personal knowledge of the petitioner or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause (*XL S. vs. Tureaud*, 20 Fed., 621; *U. S. vs. Michalski*, 265 Fed., 839; *U. S. vs. Pitotto*, 267 Fed., 603; *U. S. vs. Lai Chew*, 298 Fed., 652). The true test of sufficiency of an affidavit to warrant issuance of a search warrant is whether it has been drawn in such a manner that perjury could be charged thereon and affiant be held liable for damages caused (*State vs. Roosevelt County 20th Jud. Dis. Ct*, 244 NPac, 280; *State vs. Quartier*, 236 Pac, 746). It will likewise be noted that section 1, paragraph 3, of Article III of the Constitution prohibits unreasonable searches and seizures. Unreasonable searches and seizures are a menace against which the constitutional guaranties afford full

protection. The term "unreasonable search and r seizure" is not defined in the Constitution or in General Orders, No. 58, and it is said to have no fixed, absolute or unchangeable meaning, although the term has been defined in general language. All illegal searches and seizures are unreasonable while lawful ones are reasonable. What constitutes a reasonable or unreasonable search or seizure in any particular case is purely a judicial question, determinable from a consideration of the circumstances involved, including the purpose of the search, the presence or absence of probable cause, the manner in which, the search and seizure was made, the place or thing searched, and the character of the articles procured (*Go-Bartjimporting Co. vs. U. S.*, 75 Law. ed., 374; *Peru vs. V. S.*, 4 Fed., [2d], 881; *U. S. vs. Vatune*, 292 Fed., 497; *Agnello vs. U. S.*, 70 Law. ed., 145; *Lambert vs. U. S.*, 282 Fed., 413; *U. S. vs. Bateman*, 278 Fed., 231; *Mason vs. Rollins*, 16 Fed. Cas. [No. 9252], 2 Biss., 99).

In view of the foregoing and under the above-cited authorities, it appears that the affidavit, which served as the exclusive basis of the search warrant, is insufficient and fatally I defective by reason of the manner in which the oath was made, and therefore, it is hereby held that the search warrant in question and the subsequent seizure of the books, documents and other papers are illegal and do not in any way warrant the deprivation to which the petitioner was subjected.

IV. Another ground alleged by the petitioner in asking that the search warrant be declared illegal and cancelled is that it was not supported by other affidavits aside from that made by the applicant. In other words, it is contended that the search warrant cannot be issued unless it be supported by affidavits made by the applicant and the witnesses to be presented necessarily by him. Section 1, paragraph 3, of Article III of the Constitution provides that no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. Section 98 of General Orders, No. 58 provides that the judge or justice must, before issuing the warrant, examine under oath the complainant and any witnesses he may produce and take their depositions in writing. It is the practice in this jurisdiction to attach the affidavit of at least the applicant or complainant to the application. It is admitted that the judge who issued the search warrant in this case, relied exclusively upon the affidavit made by agent Mariano G. Almeda and that he did not require nor take the deposition of any other witness. Neither the Constitution nor General Orders, No. 58 provides that it is of imperative necessity to take the depositions of the witnesses to be presented by the applicant or complainant in addition to the affidavit of the latter. The purpose of both in requiring the presentation of depositions is nothing more than to satisfy the committing magistrate of the existence of probable cause. Therefore, if the affidavit of the applicant or complainant is sufficient, the judge may dispense with that of other witnesses. Inasmuch as the affidavit of the agent in this case was insufficient because his knowledge of the facts was not personal but merely hearsay, it is the duty of the judge to require the affidavit of one or more witnesses for the purpose of determining the existence of probable cause to warrant the issuance of the search warrant. When the affidavit of the applicant or complainant contains sufficient facts within his personal and direct knowledge, it is sufficient if the judge is satisfied that there exists probable cause; when the applicant's knowledge of the facts is mere hearsay, the affidavit of one or more witnesses having a personal knowledge of the facts is necessary. We conclude, therefore, that the warrant issued is likewise illegal because it was based only on the affidavit of the" agent who had no personal knowledge of the facts.

V. The petitioner alleged as another ground for the declaration of the illegality of the search warrant and the cancellation thereof, the fact that it authorized its execution at night. Section 101 of General Orders, No. 58 authorizes that the search be made at night when it is positively asserted in the affidavit that the property is on the person or in the place ordered to be searched. As we have declared the affidavit insufficient and the warrant issued exclusively upon it illegal, our conclusion is that the contention is equally well founded and that the search could not legally be made at night.

VI. One of the grounds alleged by the petitioner in support of his contention that the warrant was issued illegally is the lack of an adequate description of the books and documents to be seized. Section 1, paragraph 3, of Article III of the Constitution, and section 97 of General Orders, No. 58 provide that the affidavit to be presented, which shall serve as the basis for determining whether probable cause exists and whether the warrant should be issued, must contain a particular description of the place to be searched and the person or thing to be seized. These provisions are mandatory and must be strictly complied with (*Munch vs. U. S.*, 24 Fed. [2d], 518; *XJ. S. vs. Boyd*, 1 Fed. [2d], 1019; *U. S. vs. Carlson*, 292 Fed., 468; *U. S. vs. Borkowski*, 268 Fed., 408; *In re Tri-State Coal & Coke Co.*, 253 Fed., 605; *People vs. Mayen*, 188 Cal., 237; *People vs. Kami*, 256 111. App., 415); but where, by the nature of the goods to be seized, their description must be rather general, it is not required that a technical description be given, as this would mean that no warrant could issue (*People vs. Rubio*, 57 Phil., 284; *People vs. Kahn*, *supra*). The only description of the articles given in the affidavit presented to the judge was as follows: "that there are being kept in said premises books, documents, receipts, lists, chits and other papers used by him in connection with his activities as money-lender, charging a usurious rate of interest, in violation of the law." Taking into consideration the nature of the articles so described, it is clear that no other more adequate and detailed description could have been given, particularly because it is difficult to give a particular description of the contents thereof. The description so made substantially complies with the legal provisions because the officer of the law who executed the warrant was thereby placed in a position enabling him to identify the articles, which he did.

VII. The last ground alleged by the petitioner, in support of his claim that the search warrant was obtained illegally, is that the articles were seized in order that the Anti-Usury Board might provide itself with evidence to be used by li in the criminal case or cases which might be filed against him for violation of the Anti-Usury Law. At the hearing of the incidents of the case raised before the court; it clearly appeared that the books and documents had really been seized to enable the Anti-Usury Board to conduct an investigation and later use all or some of the articles in question as evidence against the petitioner in the criminal cases that may be filed against him. The seizure of books and documents by means of a search warrant, for the purpose of using them as evidence in a criminal case against the person in whose possession they were found, is unconstitutional because it makes the warrant unreasonable, and it is equivalent to a violation of the constitutional provision prohibiting the compulsion of an accused to testify against himself (*Uy Kheylin vs. Villareal*, 42 Phil, 886; *Brady vs. U. S.*, 266 U. S., 620; *Temperani vs. U. S.*, 299 Fed., 365; *U. S. vs. Madden*, 297 Fed., 679; *Boyd vs. U. S.*; 116 U. S., 616; *Carroll vs. U. S.*, 267 U. S., 132). Therefore, it appearing that at least nineteen of the documents in question were seized for the purpose of using them as evidence against the petitioner in the criminal proceeding or proceedings for violation of the Anti-Usury Law, which it is attempted to institute against him, we hold that the search warrant issued is illegal and that the documents should be returned to him.

The Anti-Usury Board insinuates in its answer that the petitioner cannot now question the validity of the search warrant or the proceedings had subsequent to the issuance thereof, because he has waived his constitutional rights in proposing a compromise whereby he agreed to pay a fine of 200 for the purpose of evading the criminal proceeding or proceedings. We are of the opinion that there was no such waiver, first, because the petitioner has emphatically denied the offer of compromise and, second, because if there was a compromise it referred not to the search warrant and the incidents thereof but to the institution of criminal proceedings for violation of the Anti-Usury Law. The waiver would have been a good defense for the respondents had the petitioner voluntarily consented to the search and seizure of the articles in question, but that was not the case because the petitioner protested from the beginning and stated his protest in writing in the insufficient inventory furnished him by the agents.

Said board alleges as another defense that the remedy sought by the petitioner does not lie because he can appeal

from the orders which prejudiced him and are the subject matter of his petition. Section 222 of the Code of Civil Procedure in fact provides that mandamus will not issue when there is another plain, speedy and adequate remedy in the ordinary course of law. We are of the opinion, however, that an appeal from said orders would not in this case be a plain, speedy and adequate remedy for the petitioner because a long time would have to elapse before he recovers possession of the documents and before the rights, of which he has been unlawfully deprived, are restored to him (*Fajardo vs. Llorente*, 6 Phil., 426; *Manotoc vs. McMicking and Trinidad*, 10 Phil., 119; *Cruz Herrera de Lukban vs. McMicking*, 14 Phil., 641; *Lamb vs. Phipps*, 22 Phil., 456).

Summarizing the foregoing conclusions, we hold:

- 1 That the provisions of the Constitution and General Orders, No. 58, relative to search and seizure, should be given a liberal construction in favor of the individual in order to maintain the constitutional guaranties whole and in their full force;
- That since the provisions in question are drastic in their form and fundamentally restrict the enjoyment of the ownership, possession and use of the personal property of the individual, they should be strictly construed;
- That the search and seizure made are illegal for the following reasons: (a) Because the warrant was based solely upon the affidavit of the petitioner who had no personal knowledge of the facts necessary to determine the existence or non-existence of probable cause, and (b) because the warrant was issued for the sole purpose of seizing evidence which would later be used in the criminal proceedings that might be instituted against the petitioner, for violation of the Anti-Usury Law;
- That as the warrant had been issued unreasonably, and as it does not appear positively in the affidavit that the articles were in the possession of the petitioner and in the place indicated, neither could the search and seizure be made at night;
- That although it is not mandatory to present affidavits of witnesses to corroborate the applicant or complainant in cases where the latter has personal knowledge of the facts, when the applicant's or complainant's knowledge of the facts is merely hearsay, it is the duty of the judge to require affidavits of other witnesses so that he may determine whether probable cause exists;
- That a detailed description of the person and place to be searched and the articles to be seized is necessary, but where, by the nature of the articles to be seized, their description must be rather general, it is not required that a technical description be given, as this would mean that no warrant could issue;
- That the petitioner did not waive his constitutional rights because the offer of compromise or settlement attributed to him, does not mean, if so made, that he voluntarily tolerated the search and seizure; and
- That an appeal from the orders questioned by the petitioner, if taken by him, would not be an effective, speedy or adequate remedy in the ordinary course of law, and, consequently, the petition for mandamus filed by him lies.

For the foregoing considerations, the search warrant and the seizure of June 3, 1936, and the orders of the respondent court authorizing the retention of the books and documents, are declared illegal and are set aside, and it is ordered that the judge presiding over the Court of First Instance of Tayabas direct the immediate return to the petitioner of the nineteen (19) documents designated on pages 1 to 4 of the inventory by Nos. 5, 10, 16, 23, 25, 26, 27, 30, 31, 34, 36, 37, 38, 39, 40, 41, 42, 43 and 45, without special pronouncement as to costs. So ordered.

Avancena, C. J., Villa-Real, Diaz, and Concepcion, JJ., concur.

CONCURRING**ABAD SANTOS, J.,**

My views on the fundamental questions involved in this case are fully set forth in my dissenting opinion filed in *People vs. Rubio* (57 Phil., 384, 395). I am gratified to see that, in the main, those views have now prevailed. I therefore concur in the decision of the court herein.

CONCURRING**LAUREL, J., concurring:**

I subscribe to the views expressed in the foregoing carefully prepared opinion, with the reservation now to stated. To my mind, the search warrant in this case does not satisfy the constitutional requirement regarding the particularity of the description of "the place to be searched and the persons or things to be seized" (par. 3, sec. 1, Art. III, Constitution of the Philippines). Reference to "books, documents, receipts, lists, chits and other papers used by him in connection with his activities as money-lender, charging usurious rates of interest in violation of the law" in the search warrant is so general, loose and vague as to confer unlimited discretion upon the officer serving the warrant to choose and determine for himself just what are the "books, documents, receipts, lists, chits and other papers" used by the petitioner in connection with his alleged activities as money-lender. The evident purpose and intent of the constitutional requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant, to the end that unreasonable searches and seizures may not be made,—that abuses may not be committed (*Uy Kheylin vs. Villareal*, 42 Phil., 886). purpose and intent of the constitutional requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant, to the end that unreasonable searches and seizures may not be made,—that abuses may not be committed (*Uy Kheylin vs. Villareal*, 42 Phil., 886).

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