

EDUARDO QUINTERO, PETITIONER, VS. THE NATIONAL BUREAU OF INVESTIGATION, HON. ELIAS ASUNCION, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND HON. JOSE FLAMINIANO, CITY FISCA...*G.R. No. L-35149. June 23, 1988*

Ponente: PADILLA, J.

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Supervening events, like the February 1986 revolution and the reported death in the United States of herein petitioner, of which the Court cannot however take cognizance (in the absence of formal notice from the parties), could be the most convenient grounds for declaring this case closed and terminated. But the convenient way is not necessarily the proper judicial recourse, especially when the issues raised remain contentions, sharpened by the persuasive force of enlightened advocacy, and which not even the impact of such supervening events has succeeded to meet.

Besides, what the Court says and decides today in this case may well be the source of wisdom for succeeding governments which should all be determined, at the very least, to avoid the excesses and, therefore, fatal pitfalls of a past regime.

In this petition for certiorari, prohibition and injunction, with preliminary injunction, petitioner seeks to annul and declare as void and without legal effect Search Warrant No. 7, issued on 31 May 1972 by respondent Judge Elias Asuncion of the then Court of First Instance of Manila, as well as all acts and proceedings taken thereunder.

The antecedents, now a part of the country's political history, are as follows:

On 19 May 1972, petitioner Eduardo Quintero, delegate of the first district of Leyte to the 1971 Constitutional Convention (Con-Con, for short) delivered a privilege speech^[1] at a plenary session of the Con-Con. In his speech, Delegate Quintero disclosed that, on different occasions, certain persons had distributed money to some delegates of the Con-Con, apparently in an effort to influence the delegates in the discharge of their functions. As an offshoot of this disclosure, Delegate Quintero delivered to the Con-Con the aggregate amount of the "payola" he himself had received, the amount of eleven thousand one hundred fifty pesos (PI 1,150.00) in cash, preserved intact for delivery to the proper officials of the Con-Con, for whatever action it may wish to take on the matter. Delegate Quintero, however, did not reveal the names of the persons who gave him the money; and he begged at that time not to be made to name names.^[2]

However, pressure mounted on Delegate Quintero to reveal the identities of the people behind the "payola" scheme. Hence, on 30 May 1972 (the day after he returned from Tacloban City, where he had attended the funeral of his brother), Delegate Quintero released from his hospital bed in San Juan de Dios Hospital, where he was hospitalized due to an indisposed condition, a sworn statement addressed to the Committee on Privileges of the Con-Con, mentioning the names of the persons who gave him the "payola." The full text of the sworn statement

released by Delegate Quintero is quoted hereunder:

"Republic of the Philippines
1971 CONSTITUTIONAL CONVENTION
Manila
THE COMMITTEE ON PRIVILEGES
1971 Constitutional Convention
Manila Hotel
Manila

Thru: THE PRESIDENT

1972 Constitutional Convention.

Dear Colleagues:

Complying with your request that I shed more light on the privileged speech which I delivered on the floor of the Convention last May 19, 1972, I wish to state under oath the following facts, without prejudice to supplying additional details:

- Amount No. 1. P-500.00 — The envelope containing the amount was handed to me at the Manila Hotel on March 19, 1971, by Delegate Gabriel Yniguez. He later made me understand it came from the First Lady.
- Amount No. 2. -P500.00 — The envelope containing the amount was received from the office of Representative Nicanor Yniguez of Southern Leyte on April 22, 1971.
- Amount No. 3. -P500.00 — The envelope containing the amount was received from Mrs. Paz Mate (wife of Congressman Mate of Leyte) in May 1971. She told me that other delegates from Leyte were being given the same amount of money by the First Lady.
- Amount No. 4. P-500.00. — The envelope containing the amount was received in the house of Congressman Marcelino Veloso on June 2, 1971 from Delegate Domingo Veloso at Bayview Hotel, Manila. Other envelopes were also given to other Samar-Leyte delegates.
- Amount No. 5. P500.00 — The envelope containing the amount was handed to me by Delegate Jaime Opinion on June 10, 1971 in the suite of Delegate Domingo VeTosb at the Bayview Hotel, Manila. Other envelopes were also given to other Samar-Leyte delegates.
- Amount No. 6.-P500.00 — The envelope containing this amount was handed to me by Delegate Domingo Veloso in the Convention Hall on June 23, 1971. He made me understand it came "from the same source."
- Amount No. 7. -P2,000.00 — The envelope containing the amount was handed to me by Delegate Ramon Salazar on June 27, 1971, in the residence of Delegate Augusto Syjuco. Delegate Salazar told me that the First Lady met Samar-Leyte delegates that noon and since I was not in that meeting, the money was being sent to me.
- Amount No. 8. -P200.00 — The envelope containing the amount was handed to me by Delegate Domingo Veloso on June 28, 1971 during a party given by President and Mrs. Diosdado Macapagal for the delegates and their ladies. Delegate Veloso told me the money came from Delegate Augusto Syjuco.
- Amount No. 9. P500.00 — The envelope containing the amount was handed to me by Delegate Federico dela Plana at the Convention Hall on July 13, 1971.
- Amount No. 10. -P500.00 — The envelope containing the amount was left inside my drawer in the Convention Hall on August 5, 1971 by Delegate Constantino Navarro, Jr. He said it came from Delegate Venancio Yaneza.

- Amount No. 11. P500.00 — The envelope containing the amount was placed on my desk under a piece of paper in the session hall on August 11, 1971 by Delegate Constantino Navarro, Jr. He said it came from Delegate Venancio Yaneza.
- Amount No. 12. -P450.00 — The envelope containing the amount was handed to me by Delegate Domingo Veloso on September 6, 1971. He said it came "from Imelda." According to Delegate Veloso, Yniguez took from the envelope P50.00 for an unnamed delegate.
- Amount No. 13. P500.00 — The envelope containing the amount was handed to me on September 23, 1971 by Delegate Domingo Veloso near the men's room. He said it came "from the First Lady."
- Amount No. 14. P500.00 — The envelope containing the amount was handed to me on October 6, 1971 by Delegate Domingo Veloso near the office of the Sergeant-at-Arms. Two other delegates. Delegate Damian Aldaba and Delegate Antero Bongbong, received an envelope each that same afternoon.
- Amount No. 15.~P500.00 — The envelope containing the amount was handed to me by Delegate Gabriel Yniguez on December 2, 1971 at the entrance of the Oakroom.
- Amount No. 16. P1,000.00 — The envelope containing the amount was handed to me by Delegate Gabriel Yniguez on January 13, 1972. He said. "This is for the months of December and January."
- Amount No. 17. P500.00 — The envelope containing the amount was handed to me on March 7, 1972 by Delegate Flor Sagadal, in the session hall. The envelope was covered by a piece of paper which Delegate Sagadal placed on my desk.
- Amount No. 18. P1,000.00—The envelope containing the amount was handed to me by Delegate Damian Aldaba on May 8, 1972. He said it came from Delegate Gabriel Yniguez.

In my privilege speech, I also said that "in that same evening of January 6, 1972, after the dinner was over, when we were still inside the Malacanang grounds on our way to our cars, one of the delegates made this announcement: "The envelopes are ready. They will be distributed in a couple of days." There was sepulchral silence from the other delegates."

The delegate who made that announcement was Delegate Casimiro Madarang of Cebu.

Yours very sincerely,

(Sgd) EDUARDO QUINTERO

Delegate

First District of Leyte[3]."

Thus, the then First Lady, Mrs. Imelda R. Marcos, among others, was implicated in the Quintero in expose. Hours after Delegate Quintero's statement was made public, then President Ferdinand E. Marcos went on the air as well as on TV to denounce Mr. Quintero, and Mr. Marcos averred that he "shall not rest until I have unmasked this pretender, his masterminds and accomplices." [4]

The following day, 31 May 1972, Mr. Marcos also made a statement which was reported in the Bulletin issue of 1 June 1972, as follows:

"The President said he had already taken up the matter with his legal counsel and that unlike the Quintero expose, he was preparing a ""meticulous, circumspect and legal" case against this tool of the hate Marcos group.

"The President said his report from witnesses who would soon be presented showed that the Quintero affidavit was originally prepared in the office of Senator Salonga, a known oppositionist, and signed by a notary public

who also works in the Salonga law office.

"The document according to the President, was brought to the hospital room of Quintero and there it was signed by the Leyte delegate. The President said that at the proper time and at the proper occasion, he would complete the jigsaw puzzle of the case.

"We will prove the personal motivation of this witness who turned about and sought to implicate the name of the First Lady, after previously making public statements to the effect that the First Family had nothing to do with this affair," the President said.

"We will prove that this delegate came to Malacanang demanding money from the President and the First Lady, and had been denied."

"We will prove that this delegate has engaged in other immoral activities violative of his oath as a delegate, as lawyer and which rendered him unacceptable as witness to anything whatsoever."

The President said that while he suffered so much in the past over the verification heaped on him, he had never seen a man who could stoop so low as to implicate the First Lady on hearsay simply because the First Family had refused to give him money.

"I am passionate about this dastardly act," the President said. "I would, if necessary, spend the rest of my life to uncover the person or persons behind this act. Quintero was just a tool in the hands of these people." (Manila Bulletin, Thursday, June 1, 1972)."[5]

In the evening of the same day that Mr. Marcos issued the afore-quoted statement, the agents of the respondent National Bureau of Investigation (NBI, for short) raided the house of Delegate Quintero, at 2281 Mayon St., Sta. Ana, Manila, on the basis of Search Warrant No. 7 issued also on 31 May 1972 by respondent Judge Elias Asuncion of the Court of First Instance of Manila. After the raid, said NBI agents claimed to have found in the Quintero residence, and therefore seized, bundles of money amounting to P379,000.00.

On 1 June 1972, the NBI filed with the City Fiscal of Pasay a criminal complaint for direct bribery against Delegate Quintero. The fiscal immediately scheduled a preliminary investigation in relation thereto.

On 5 June 1972, Delegate Quintero availed of the present recourse.

On 6 June 1972, the Court issued a temporary restraining order enjoining the use in any proceeding of the objects seized by the respondent NBI from the Quintero residence.

The 1935 Constitution which was in force at the time of the issuance of the questioned search warrant, provides:

Article III — Bill of Rights

"Section 1 (3) The rights 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 3, Rule 126 of the Rules of Court provided:

"Sec. 3 . Requisites for issuing search warrant. — A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the judge or justice of the peace 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.

"No search warrant shall issue for more than one specific offense."

Under the aforequoted provisions, a search warrant may issue only upon the finding of the judge of "probable cause," and the latter has been defined as "such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched." [6]

In the case at bar, the questioned search warrant was issued by respondent Judge, upon application of NBI agent Samuel Castro. Said application was accompanied by an affidavit of the complainant, Congressman Artemio Mate, whose affidavit was allegedly made also before the respondent judge.

The interrogations conducted by the respondent judge, upon the applicant NBI agent Samuel Castro, showed that the latter knew nothing, of his own personal knowledge, to show that Mr. Quintero had committed any offense. Said interrogation is quoted hereunder:

"Interrogations Conducted by Judge Elias B. Asuncion Upon NBI Agent Samuel Castro, this 31st day of May 1972 at City Hall, Manila.

Questions by the Court:

(Witness Being Sworn To In Accordance With Law)

Q.

Please state your name and other personal circumstances.

A

Samuel Castro, of legal age, married and NBI Agent, Manila.

Q.

You are applying for a search warrant, what are the facts upon which you base your application?

A

Facts gathered from my investigation on Congressman Artemio Mate of Leyte who declared to us that he has seen Delegate Eduardo Quintero receive bribe money from two men as a consideration of signing a statement which he submitted to the Committee on Privileges of the Constitutional Convention.

Q.

Do you know where the bribe money is now kept?

A.

We have reason to believe that the bribe money is now kept in the residence of Delegate Eduardo Quintero at 2281 Mayon St., Sta. Ana, Manila.

That is all.

Certification

I hereby certify that the foregoing is a record of the proceedings I took on my interrogation of NBI agent Samuel Castro, the questions having been asked by me and the answers given by NBI agent Samuel Castro in connection with his application for a search warrant.

May 31, 1972, Manila.

(Sgd) Elias B. Asuncion

Judge

Branch XII, CFI"[7]

On the other hand, the sworn statement of Congressman Mate states:

REPUBLIC OF THE PHILIPPINES
CITY OF MANILA

INTERROGATION BY JUDGE ELIAS B. ASUNCION UPON CONGRESSMAN ARTEMIO MATE IN CONNECTION WITH AN APPLICATION FOR SEARCH WARRANT AT THE CHAMBER OF JUDGE ELIAS B. ASUNCION THIS 31ST DAY OF MAY, 1972.

COURT QUESTIONING: (After Deponent was sworn to in accordance with law)

Q

Please state your name and other personal circumstances.

A

Artemio Mate, of legal age, married, Congressman of the first district of Leyte, and a resident of Tacloban.

Q

Why are you here, Congressman?

A

I would want to declare in connection with the fact that Delegate Eduardo Quintero had received half a million pesos as a consideration for having signed an affidavit or statement.

Q

What about this affidavit or statement?

A

It is his affidavit which he released to the Committee on Privileges of the Constitutional Convention naming certain persons as having doled out to him on various occasions sums of money contained in envelopes.

Q

Why do you say that Delegate Quintero received half a million pesos as consideration of his having signed that affidavit?

A

Because when I went to the San Juan De Dios Hospital in the evening of May 29, 1972 where Delegate Eduardo Quintero is confined, for the purpose of greeting him on his birthday as I was about to enter Room Number 307, I saw two persons at his bedside. On seeing them, I did not enter the room because from the door screen I noticed that they were in serious huddle. So I stayed behind the door screen which kept me out from their view. While there, I heard one of them say that "half of the amount" promised will be delivered immediately provided that he (Delegate Quintero) agrees to sign the statement which he was then holding, after the person pulled out a folder from his brief case. Then, I heard Delegate Quintero asked: "Where is the half?." At this time, one of the two was holding a suitcase from the other man and then said: "Here it is," as he opened a little the suitcase. As the suitcase was half-opened, I saw bundles of money inside the suitcase.

Q

Then, what happened?

A

The suitcase was closed, and then I saw Delegate Quintero took the folder from that person and Delegate Quintero placed the folder under his pillow, while he was nodding as if saying "yes."

Q

After that, what happened'?

A

The two stood up, together with Mrs. Quintero and after wishing Delegate Quintero for speedy recovery, they were then walking towards the door. Then, I heard Mrs. Quintero say to her husband that it would be better for her to bring home the suitcase, and Quintero agreed. So, Mrs. Quintero and the two men left together. One of

them offered to carry the suitcase for Mrs. Quintero. As they were already going out, I pretended to have just arrived and so we met. Q What happened when you met them?

A

I asked Mrs. Quintero where she was going, and she replied nervously that she was going to their Sta Ana residence.

Q

Why do you say that the money in the suitcase was for the payment of Delegate Quintero's signing of the statement?

A

Because we had an antecedent conversation with Mrs. Quintero when we were still in Tacloban. There was one time I, and Delegate Ramon Salazar, went to the house of Delegate Quintero at Tacloban City. This was at the eve of the burial of the deceased brother of Quintero. At this time, Delegates Feria and Occena were also in the house of Delegate Quintero and we were informed that those two — Feria and Occena — were with Delegate Quintero in his room. So, we wanted to see them also. As we were going up the stairs of the house to the second floor, we were met by Mrs. Quintero. Mrs. Quintero pulled us aside and pointblank whispered to us: "If you or your group can match the one million pesos offered to us by Mano Pio Pedrosa and the Liberals, your Tio Dading (Quintero) will agree not to proceed with the expose."

Q And what did you tell her?

A I was taken aback by her revelation and I would not answer her. After that we chose to leave her and we asked that we be allowed to see Delegate Quintero. Upon seeing them— Delegate Quintero, Feria and Occena — in the room, they immediately stopped their conversation.

Q Now, going back to the money inside the suitcase. Did you see Mrs. Quintero bring out the suitcase from the ward where Delegate Quintero was confined?

A Yes, sir. They brought it out. It was held by the man who offered to carry it for Mrs. Quintero.

Q Do you know where this money was brought?

A I have good reasons to believe that it is now in the residence of Delegate Eduardo Quintero at 2281 Mayon Street, Sta. Ana, Manila, as I heard Mrs. Quintero told Delegate Quintero that it would be better for her to bring the suitcase to their residence.

Q Do you wish to say more?

A I am ready to answer any question, but if no more asked now, then I will declare on further details when the proper time comes.

Q Are you willing to sign this statement freely, without mental reservations, nor of force, or threat or duress to vitiate your voluntary will?

A Yes.

IN WITNESS WHEREOF, I hereunto sign this 31st day of May, 1972, at City Hall, Manila.

(Sgd.) ARTEMIO MATE (Deponent)

SUBSCRIBED AND SWORN to before me this 31st day of May, 1972, at City Hall, Manila.

(Sgd.) ELIAS B. ASUNCION Judge, Br. XII, CFI Manila."[8]

It is quite evident that the aforequoted statements did not provide sufficient basis for the finding of probable cause upon which a search warrant could validly issue. The statement of the applicant, NBI agent Samuel Castro, had no weight at all, for lack of personal knowledge about any offense that was committed by petitioner. On the other hand, it is clear from a careful examination of Congressman Mate's statement that, from it, no judicious, reasonable and prudent man could conclude that probable cause existed that Mr. Quintero had committed the crime of direct bribery.

The statement of Congressman Mate was characterized with several material omissions. Firstly, it was not shown by any competent evidence that the document inside the folder which he (Mate) allegedly saw was being given to Quintero in the hospital room, was the very statement of 'expose' which Quintero released to the Committee on Privileges of the Con-Con. Congressman Mate never made any statement that he knew what the document was — supposedly inside the folder handed to Quintero. Neither was any verification made by the respondent judge to find out whether Congressman Mate knew, of his personal knowledge, what the document was — contained in the said folder, and whether he (Mate) knew, of his personal knowledge, that the sworn statement released by Quintero to the Committee on Privileges, was the very statement or document contained in said folder.

Secondly, it was not shown by any competent evidence that the document supposedly inside the folder — whatever it was — was actually signed by Quintero. What Congressman Mate supposedly saw was that Quintero "placed the folder under his pillow, while he was nodding as if saying "yes." "But the fact remained that the statement of Congressman Mate did not show that Quintero signed whatever was inside the folder given to him by the two unidentified persons, before they left the room; and then there was no showing by Congressman Mate that he ever saw Quintero sign afterwards the alleged "statement" contained in the folder.

Thirdly, there was no showing by competent evidence that the money supposedly given to Quintero was the payment for the signing by Quintero of the statement — whatever it was — given to him inside a folder by the two persons. The only thing that linked the alleged giving of the money to Quintero, to his alleged signing of the statement, was an inference from hearsay evidence, which was the supposed statement of Mrs. Quintero, on a different occasion, that her husband was being offered P1,000,000.00 by Pio Pedrosa and the Liberals to make the 'expose.' And from this, it was drawn by Congressman Mate that the money supposedly delivered to Quintero in

the hospital room was payment for his signing the alleged document inside the folder, containing the 'expose'.¹

The supposed statement of Mrs. Quintero was purely hearsay, insofar as petitioner Quintero was concerned. Her statement, if any, was not binding upon the petitioner, and therefore, should not prejudice the latter. The respondent judge should have known this before he issued the questioned search warrant. As held by the Court, an application for search warrant, if based on hearsay, cannot, standing alone, justify the issuance of a search warrant.^[9] There is no doubt, in the case at bar, that the alleged statement of Mrs. Quintero was indubitably hearsay, insofar as petitioner Quintero was concerned.

The statement of Congressman Mate, which was the sole basis for the issuance of the search warrant, was replete with conclusions and inferences drawn from what he allegedly witnessed when he visited Mr. Quintero in the hospital. It lacked the directness and definiteness which would have been present, had the same statement dealt with facts which Congressman Mate actually witnessed. As held in one case, persons swearing to, or supporting the application for, search warrants, must set forth the facts that they know personally^[10] and not the conclusions, or the beliefs of the affiant, so as to justify a reasonable and ordinarily prudent man, whose duty is to ascertain whether probable cause exists, to conclude that a violation of the law has occurred.

Search warrants are not issued on loose, vague or doubtful basis of fact, nor on mere suspicion or belief. The facts recited in an affidavit supporting the application for a search warrant must be stated with sufficient definiteness, so that, if they are false, perjury may be assigned on the affidavit.^[11] Hence, affidavits which go no further than to allege conclusions of law, or of fact, are insufficient.

Considering the generality of the statement of Congressman Mate, a judicious and prudent man would have attacked the statements made by the deponent, instead of asking leading questions, and conducting the examination in a general manner, like what the respondent judge did in the case at bar. As held in *Nolasco vs. Pano*,^[12] the questions propounded by respondent Executive Judge to the applicant's witness are not sufficiently searching to establish probable cause. Asking of leading questions to the deponent in an application for search warrant, and conducting of examination in a general manner, would not satisfy the requirements for issuance of a valid search warrant.

Had the respondent judge been cautious in issuing the questioned search warrant, he would have wondered and, therefore, asked the affiant why said incident was reported only on 31 May 1972, when the latter allegedly witnessed it on 29 May 1972. Also, respondent judge should have questioned the statements of complainant Congressman Mate, and should have been alert to some ulterior motives on the part of the latter, considering that Congressman Mate's wife was one of those implicated in the 'expose' made by Quintero.^[13] An ulterior motive to an application for search warrant should alert the judge to possible misrepresentations.^[14]

Another circumstance which points to the nullity of the questioned search warrant, for having been issued without probable cause, is the fact that the search warrant delivered to the occupant of the searched premises, Generoso Quintero (nephew of the petitioner) was issued in connection with the offense of "grave threats" and not "direct bribery," which was the criminal complaint filed against Quintero with the respondent fiscal. The offense charged or labelled in the questioned search warrant had, therefore, no relation at all to the evidence, i.e., "half a million pesos, Philippine currency," ordered to be seized in said search warrant. There was thus no ground whatsoever for the respondent judge to claim that facts and circumstances had been established, sufficient for him to believe that the crime of "grave threats" had been committed, because, on the basis of the evidence alone, and what was ordered to be seized in the search warrant he issued, no relation at all can be established. It is true that the copy of the questioned search warrant that remained in the file of the respondent Judge, had been changed to indicate that the offense was that of direct bribery under Art. 210 of the Revised Penal Code. The change was effected by the

deletion, in ink, of the typewritten words "grave threats" and the superimposition, in ink, of the figures "210" (Art. 210 of Revised Penal Code - Direct Bribery) over the typewritten figures "282" (Art. 282 of the Revised Penal Code — Grave Threats). The respondents claimed that these changes were made at the time the warrant was issued - not after the search was made. But as admitted by respondents[15] the warrant in this case was prepared beforehand by the NBI, in an NBI form,[16] which stated only the name of the crime charged, but did not contain any description of the acts constituting the crime charged.

According to respondent judge, when the search warrant was presented to him by applicant NBI agent Samuel Castro, he saw that the crime charged was for "grave threats." But after he allegedly conducted his interrogations, he found that the proper charge should be "Direct Bribery." Hence he caused the proper changes in the search warrant, but inadvertently, he failed to make the proper changes in the sole copy that was presented by the NBI agents to Generoso Quintero, although the copy retained by the NBI agents had been corrected.

On the other hand, petitioner claimed that the changes in the questioned search warrant were made after the search was made. According to petitioner, his counsel, Atty. Ordonez — who was present during the latter part of the raid - questioned in fact the materiality of the property being seized to the offense stated on the warrant, i.e., "grave threats." Consequently, if the copy in the possession of the raiding party had indeed been corrected before the search, the raiding party, would have been able to clear up the matter at once,, when petitioner's counsel raised the question with them. However, the raiding party kept silent on the matter at that time, thereby negating their later pretenses.

Besides, the explanation given by the respondent judge as to the difference in the copy of the warrant served on the petitioner's representative and those retained by the respondents, cannot be given any weight, for no presumption of regularity in the performance of official functions can be invoked by a public officer, when he himself undertakes to justify his acts.[17] Furthermore, the Court notes the admission of the respondents that it was an NBI form which was used for the search warrant, and that it was pre-filled by the applicant, before it was presented to the respondent judge, but that, he (the judge) allegedly made the changes after he had conducted his examination. The Court considers the act of the respondent judge in entertaining a pre-filled search warrant as irregular; it casts doubt upon his impartiality.

Disregarding for a moment the absence of "probable cause," the search itself that was conducted by the NBI agents who raided the house of petitioner, pursuant to the questioned search warrant, was highly irregular. The two (2) occupants of the house who witnessed the search conducted, Generoso Quintero and Pfc. Alvaro Valentin, were closeted in a room where a search was being made by a member of the raiding party, while the other NBI agents were left to themselves in the other parts of the house, where no members of the household were in a position to watch them, and thus they conducted a search on their own.

Such a procedure, wherein members of a raiding party can roam around the raided premises unaccompanied by any witness, as the only witnesses available as prescribed by law are made to witness a search conducted by the other members of the raiding party in another part of the house, is held to be violative of both the spirit and the letter of the law,[18] which provides that "no search of a house, room, or any other premises shall be made except in the presence of at least one competent witness, resident of the neighborhood."

Another irregularity committed by the agents of respondent NBI was their failure to comply with the requirement of Sec. 10, Rule 126 of the Rules of Court which provides that "The officer seizing property under the warrant must give a detailed receipt for the same to the person on whom or in whose possession it was found, or in the absence of any person, must, in the presence of at least one witness, leave a receipt in the place in which he found the seized property." The receipt issued by the seizing party in the case at bar,[19] showed that it was signed by a

witness, Sgt. Ignacio Veracruz. This person was a policeman from the Manila Metropolitan Police (MMP), who accompanied the agents of respondent NBI during the conduct of the search. The requirement under the aforementioned Rule that a witness should attest to the making of the receipt, was not complied with. This requirement of the Rules was rendered nugatory, when the one who attested to the receipt from the raiding party was himself a member of the raiding party.

The circumstances prevailing before the issuance of the questioned search warrant, and the actual manner in which the search was conducted in the house of the petitioner, all but imperfectly, and yet, strongly suggest that the entire procedure, from beginning to end, was an orchestrated movement designed for just one purpose — to destroy petitioner Quintero's public image with "incriminating evidence," and, as a corollary to this, that the evidence allegedly seized from his residence was "planted" by the very raiding party that was commanded to "seize" such incriminating evidence.

ACCORDINGLY, the Court finds, and so holds, that the Questioned search warrant issued by respondent judge, is null and void, for being violative of the Constitution and the Rules of Court.

WHEREFORE, Search Warrant No. 7 issued on 31 May 1972 by respondent Judge is declared NULL and VOID and of no force and effect. The Temporary Restraining Order issued by this Court on 6 June 1972 is hereby made PERMANENT. The amount of P379,200.00 allegedly seized from the house of petitioner Quintero, now in the possession of the Central Bank, and already demonetized, is left with said Central Bank, to be disposed of, as such, in accordance with law and the regulations.

SO ORDERED.

Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

Yap, C.J., (Chairman) took no part, counsel for petitioner.

[1] Petition, Annexes "A" and "A-I".

[2] Petitioner's Memorandum, Rollo, pp. 198-199.

[3] Petition, Annex "B", Rollo, pp. 52-54.

[4] Petitioner's Memorandum, Rollo, p. 199.

[5] Annex "C-I", Rollo, p. 56.

[6] Burgos, Sr. vs. Chief of Staff, AFP No. L-64161, December 26, 1984, 133 SCRA 813.

[7] Annex "C", Rollo, p. 152.

[8] Annex "G", Rollo, pp. 294-295.

[9] Roan vs. Gonzales, No. 71410. November 25, 1986, 145 SCRA 694.

[10] Burgos, Sr. vs. Chief of Staff, AFP, .supra, at p. 814.

[11] Mata v. Bayona, No. 50720, March 26, 1984. 128 SCRA 391.

[12] No.69803, October 8, 1985, 139 SCRA 163.

[13] See footnote No. 3.

[14] Roan vs. Gonzales, supra at p. 695.

[15] Answer, p. 14, Rollo, p. 87.

[16] Petition, Annex "D".

[17] Mata vs. Bayona, supra at p. 374.

[18] Sec. 7, Rule 126 of the Rules of Court.

[19] Petition. Annex "J". Rollo. pp. 69-70.

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