

DANTE R. GUTIERREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, HON. ANTONIO M. EUGENIO, JR., PRESIDING JUDGE OF RTC-MANILA, BRANCH 24, AND MARVIN DE JEMIL OF THE NATIONAL BUREAU...

Ponente: COSICO, J.

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COSICO, J.:

This is a petition for certiorari and prohibition under Rule 65 of the 1997 Rules of Civil Procedure which seeks to annul and set aside herein public respondent judge Honorable Antonio M. Eugenio, Jr.'s Orders dated December 8, 2004 and April 14, 2005, and to desist respondent judge from further proceeding and/or taking any action pursuant to Search Warrant No. 04-5051.

The Facts

Herein petitioner Dante R. Gutierrez is the owner and proprietor of Capitol Allied Trading and Transport (CATT Gas, for brevity), a single proprietorship duly existing and registered under Philippine laws, with branch office situated at No. B1 L3 PH4, G. Azucena Street, Barangay Longos, Malabon, Metro Manila. It has been engaged in the Liquefied Petroleum Gas (LPG) business for more than twenty (20) years.

On March 5, 2004, herein public respondent judge Honorable Antonio M. Eugenio, Jr. of the Regional Trial Court, Branch 24 of Manila issued in *People of the Philippines v. Dante R. Gutierrez, Lourdes D. Gutierrez, James D. Gutierrez and/or Occupants of CATT Gas Refilling Plant*, located at Azucena Street, Longos, Malabon, Metro Manila Search Warrant No. 04-50511 for illegal trading of LPG, or violation of Section 2 (a), in relation to Sections 3 (c) and 4, of Batas Pambansa Blg. 33, as amended by P.D. No. 1865. The warrant reads in part –

“It appearing to the satisfaction of the undersigned after examining, under oath the applicant, MARVIN E. DE JEMIL, NBI Agent, Field Operations Division, Intelligence Services, National Bureau of Investigation (‘NBI FOD-IS’, for brevity), Taft Avenue, Manila, and his witness, a certain Mr. Joel Cruz, that there are good and sufficient reasons to believe that a violation of Section 2 (a), in relation to Sections 3 (c) and 4, of Batas Pambansa Blg. 33, as amended by Presidential Decree No. 1865, has been committed or is about to be committed, and that there are good and sufficient reasons to believe that the following:

- Empty/filled Fifty Kilogram (50 Kg.) and/or Twenty-Two Kilogram (22 Kg.) and/or Eleven Kilogram (11 Kg.) and/or Five and 5/10 Kilogram (5.5 Kg.) and/or Two and 7/10 Kilogram (2.7 Kg.) Liquefied Petroleum Gas (LPG) cylinders being used and/or intended to be used for the illegal trading of LPG products, i.e., refilling of the branded LPG cylinders enumerated hereunder without the written authorization of their respective companies, more particularly described as follows:

- Empty/filled Shellane 50 Kg. and/or 11 Kg. LPG cylinders owned by Pilipinas Shell Petroleum Corporation;
- Empty/filled Petron Gasul 50 Kg. and/or 11 Kg. LPG cylinders owned by Petron Corporation;
- Empty/filled Petron Gasulette 2.7 Kg. LPG cylinders owned by Petron Corporation;

- Empty/filled Totalgaz 50 Kg. and/or 22 Kg. and/or 11 Kg. LPG cylinders owned by Total (Philippines) Corporation; and
- Empty/filled Superkalan Gaz 2.7 Kg. LPG cylinders owned by Total (Philippines) Corporation;
- Machinery and/or equipment, such as but not limited to, LPG bullet tanks, LPG filling heads, LPG filling scales, LPG seals bearing the marks of the abovementioned companies, compressors, pumps, electric switches, and/or panel boards, being used or intended to be used for the illegal trading of the abovementioned LPG cylinders owned by the aforementioned companies;
- Invoices, ledgers, journals, delivery receipts, official receipts, purchase orders, cash and/or check vouchers, counter-receipts, and all other books of accounts and/or documents showing the illegal trading of the abovementioned LPG cylinders owned by the aforementioned companies; and
- Delivery vehicles, tanker lorry, and/or conveyances being used or intended to be used for the illegal trading of the abovementioned LPG cylinders owned by the aforementioned companies;

are in the possession and control of DANTE R. GUTIERREZ, LOURDES D. GUTIERREZ, JAMES D. GUTIERREZ and/or OCCUPANTS OF CAPITOL ALLIED TRADING & TRANSPORT (CATT) GAS REFILLING PLANT, located at Azucena Street, Longos, Malabon, Metro Manila, and which are being kept, displayed, and/or stored at the above-mentioned address.

“You are hereby commanded to make an immediate search, at any time of the day or night, of the premises above-described and to search for, and seize, the above-described personal properties which are the subject of the aforesaid offense.

“As requested, you are hereby authorized to retain temporary custody of the seized items, to be stored at No. 3385 Lubiran Street, Bacood, Old Sta. Mesa, Manila, and to produce the same upon order of this Honorable Court or as lawfully directed by any other competent court.

“You are further directed to submit a return of this warrant within ten (10) days from today.”[2]

Also on March 5, 2004, public respondent issued Search Warrant No. 04-5052[3], the contents of which are substantially the same as the aforequoted search warrant, but specifically for violation of Section 2(c), in relation to Section 4 of Batas Pambansa Blg. 33, as amended by Presidential Decree No. 1865.

Pursuant to the said warrants, agents of the National Bureau of Investigation (NBI, for brevity) conducted on March 5, 2004, at about 5:15 p.m., a search and seizure operation in the premises of CATT Gas.

On March 11, 2004, petitioner Gutierrez, through counsel, requested from the branch clerk of court of the RTC the complete records of the application for search warrants. However, upon a perusal of the records of the case, petitioner’s counsel discovered that there was no transcript of the searching questions and answers attached to the records of Search Warrants Nos. 04-5051 and 04-5052. The petitioner obtained a copy of the transcript of the questions and answers only on March 16, 2004.

On July 15, 2004, there still being no criminal action filed against the petitioner before a court of competent jurisdiction, he filed with the sala of the respondent judge an omnibus motion (to quash search warrant and to exclude and return illegally seized documents)[4] on the following grounds –

- SEARCH WARRANT NO. 04-5052 IS A GENERAL WARRANT OR “SCATTER-SHOT WARRANT” AS IT DOES NOT SPECIFY THE OFFENSE FOR WHICH IT WAS ISSUED.
- SEARCH WARRANT[S] NOS. 04-5051 AND 04-5052 ARE GENERAL WARRANTS AS THEY DO NOT PARTICULARLY DESCRIBE THE PERSONS AND THINGS TO BE SEIZED BUT GENERALLY

INCLUDES ALL PERSONS OR OCCUPANTS PRESENT IN THE PLACE TO BE SEARCHED AND ALL THINGS USED EVEN IN THE CONDUCT OF THE LEGITIMATE BUSINESS OF THE RESPONDENT.

- SEARCH WARRANT[S] NOS. 04-5051 AND 04-5052 WERE ISSUED WITHOUT PROBABLE CAUSE AND/OR THE PERSON WHO APPLIED FOR THEM HAD NO PERSONAL KNOWLEDGE OF THE APPLICATION FOR SEARCH WARRANT.

- SEARCH WARRANT[S] NOS. 04-5051 AND 04-5052 ARE UNREASONABLE SEARCH WARRANTS BECAUSE THEY WERE IMPLEMENTED BY THE POLICE (NBI) IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF RESPONDENT AGAINST UNLAWFUL SEARCH WARRANT.

- SEARCH WARRANTS NOS. 04-5051 AND 04-5052 WERE ISSUED IN VIOLATION OF THE RULE THAT SEARCHING QUESTIONS AND ANSWERS CONDUCTED BY THE JUDGE ON THE APPLICANT AND HIS WITNESS MUST BE ATTACHED TO THE RECORDS OF THE APPLICATION FOR SEARCH WARRANT.

The motion was opposed by applicant NBI Sr. Agent Marvin E. De Jemil and private complainants Shellane Dealers Association, Petron Gasul Dealers Association and Totalgaz Dealers Association.

The Ruling of the RTC

On December 8, 2004, the RTC issued a Joint Order[5] partly granting petitioner's motion to quash. It ordered the quashal of S.W. No. 04-5052 because the warrant failed to conform to the requisite singleness of offense, given the fact that Section 2 (c) of B.P. Blg. 33 speaks of "underdelivery or underfilling beyond authorized limits in the sale of petroleum products..."

The RTC however maintained the validity of S.W. No. 04-5051 after finding that it was not a general warrant as the descriptions therein of the things to be seized were adequate, that the applicant and his witnesses had personal knowledge of the alleged illegal act imputed against CATT Gas, that its implementation was done in accordance with the constitutional rights of the petitioner, and that the search warrant was issued only after the conduct of searching questions and answers. Thus, the dispositive portion of the order reads –

“ACCORDINGLY, for the reasons aforestated, Search Warrant No. 04-5052 is hereby ordered quashed. The applicant and the private complainants are hereby directed to return to the respondent the items seized pursuant to the said warrant.

“The Motion to Quash Search Warrant No. 04-5051 is hereby denied for lack of merit.

“SO ORDERED.”[6]

Petitioner's motion for reconsideration was denied via an Order[7] dated April 14, 2005. Hence, the instant petition for certiorari and prohibition.

The Instant Petition

Petitioner Dante Gutierrez claims that public respondent judge acted arbitrarily, capriciously and with grave abuse of discretion amounting to lack or excess of jurisdiction when he –

- DENIED PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 04-5051 AND RULED THAT THE SUBJECT SEARCH WARRANT IS NOT A GENERAL WARRANT DESPITE EVIDENCE TO THE CONTRARY;

- DENIED PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 04-5051 AND DECLARED THAT THE SUBJECT SEARCH WARRANT WAS ISSUED WITH PROBABLE CAUSE AND/OR THE

PERSON WHO APPLIED FOR IT HAS PERSONAL KNOWLEDGE OF THE APPLICATION FOR SEARCH WARRANT;

- DENIED PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 04-5051 AND DECREED THAT THE SUBJECT SEARCH WARRANT DID NOT VIOLATE THE CONSTITUTIONAL RIGHTS OF PETITIONER AGAINST UNLAWFUL SEARCH WARRANT AND ITS IMPLEMENTATION IS REASONABLE;

- DENIED PETITIONER'S MOTION TO QUASH AND MOTION FOR RECONSIDERATION WITHOUT ANY FINDINGS OF FACTS ON THE ISSUES RAISED THEREIN, CONTRARY TO SUBSTANTIVE AND PROCEDURAL LAW; and

- DENIED PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 04-5051 AND IN FINDING THAT THE SUBJECT SEARCH WARRANT WAS NOT ISSUED IN VIOLATION OF THE RULE THAT SEARCHING QUESTIONS AND ANSWERS CONDUCTED BY THE JUDGE ON THE APPLICANT AND HIS WITNESS MUST BE ATTACHED TO THE RECORDS OF THE APPLICATION FOR SEARCH WARRANT.

This Court's Ruling

After due study, this Court finds the instant petition bereft of merit. Taking into account the prevailing law and jurisprudence on the matter of issuance and implementation of search warrants, we hold that no grave abuse of discretion amounting to lack or excess of jurisdiction was committed by the respondent judge in denying petitioner's motion to quash Search Warrant No. 04-5051.

The laws applicable to the instant case are Sections 4, 5, 6 and 8, Rule 126 of the 2000 Rules on Criminal Procedure, which read—

Sec. 4. Requisites for issuing search warrant. — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally 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 things to be seized which may be anywhere in the Philippines.

Sec. 5. Examination of complainant; record. — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

Sec. 6. Issuance and form of search warrant. — If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules.

Sec. 8. Search of house, room, or premises to be made in presence of two witnesses. — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Prescinding from the foregoing, the following are the requisites for the validity of a search warrant: (1) probable cause is present; (2) such presence is determined personally by the judge; (3) the complainant and the witnesses he or she may produce are personally examined by the judge, in writing and under oath or affirmation; (4) the applicant and the witnesses testify on facts personally known to them; and (5) the warrant specifically describes the person and place to be searched and the things to be seized.[8]

The subject search warrant could hardly be considered a general or “scatter-shot” warrant prohibited under the law. It bears stressing that Search Warrant No. 04-5051 was issued by the public respondent for petitioner’s alleged illegal trading of Liquefied Petroleum Gas (LPG), or violation of Section 2(a), in relation to Sections 3(c) and 4, of Batas Pambansa Blg. 33, as amended by P.D. No. 1865, by refilling another company’s or firm’s cylinders without such company’s or firm’s written authorization. Petitioner’s contentions that the search warrant failed to state with particularity the place and persons to be searched and the goods or items to be seized are clearly misplaced. We note that compliant to the provisions of Section 4, Rule 126 of the 2000 Rules on Criminal Procedure, Search Warrant No. 04-5051 specifically indicates the place to be seized by virtue of the warrant, i.e., “Capitol Allied Trading & Transport (CATT) Gas Refilling Plant, located at Azucena Street, Longos, Malabon, Metro Manila.” The mere circumstance that the warrant fails to indicate petitioner’s complete address as No. B1 L3 PH4, G. Azucena Street, Brgy. Longos, Malabon, Metro Manila, is of insignificant value and insufficient to declare the search warrant as invalid. Considering that the place to be searched is particularly named and the location thereof is accurate, petitioner’s claim is clearly untenable because the law enforcement officers are sufficiently guided and left with no discretion as to which property to seize. A description of the place to be searched is sufficient if the officer serving the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the officers to it, satisfies the constitutional requirement of definiteness.[9]

Moreover, the records provide that the warrant’s executing officer, herein respondent NBI Agent Marvin E. De Jemil, was also the applicant of the search warrant. A map indicating the exact location of CATT Gas Refilling Plant was even attached to the application. As held by the Supreme Court in the case of *People v. Salanguit*[10], where the location of the accused’s house was made determinate by reference to the affidavits supporting the warrant, and made part of the record, there can be no doubt that the warrant described the place to be searched with sufficient particularity.

The fact that the subject search warrant referred to Dante R. Gutierrez, Lourdes D. Gutierrez, James D. Gutierrez and/or Occupants Of Capitol Allied Trading & Transport (CATT) Gas Refilling Plant likewise did not make it a general search warrant. Petitioner’s reliance on the ruling of the Supreme Court in the case of *Pangandaman v. Casar*, 159 SCRA 599 [1998], declaring the invalidity of the warrant of arrest issued to fifty (50) John Does is clearly misplaced considering that the subject of the instant petition is a search warrant and not a warrant of arrest. In search warrants, what is essential is that the place to be searched and the things to be seized are identified with particularity. The requisite on naming with particularity the persons referred to in the case of *Pangandaman* was however essential because the subject of the said case was a warrant of arrest, i.e., the apprehension or arrest of persons.

Contrary to the claim of the petitioner, the things to be seized under the subject search warrant were defined with particularity. As correctly held by the trial court –

“In the matter of the alleged infirmities of search warrant No. 04-5051, we hold that the warrant is not a general warrant as we find the description in the warrant adequate.

“The requirement of particularity in the description of the things to be seized is only as the circumstances will ordinarily allow. Where, by the nature of the things to be seized, their description must be general, a technical description is not required. (*People vs. Rubio*, 57 Phil. 384)

“A search warrant has been said ‘to particularly [describe] the things to be seized when the description is as specific as the circumstances will ordinarily allow, or when the description expresses a conclusion of fact – not of law – by which the warrant officer may be guided in making the search and seizure, or when the things

described are limited to those which bear direct relation to the offense for which the warrant is being issued.

“A perusal of search warrant No. 04-5051 readily reveals that all the articles or things described therein have a direct relation to the offense for which the warrant was issued.”[11]

It bears stressing that the constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures.[12] Given the clear descriptions cited in the questioned warrant, there is no clear showing that its executing officers could be misled or could exercise discretion as to the items to be seized. The terms of the warrant are therefore adequate. The items are alleged to be those specifically used by the petitioner in the illegal trading or violation of Section 2(a), in relation to Sections 3(c) and 4, of Batas Pambansa Blg. 33.

As to the second issue, petitioner contends that no probable cause supported the issuance of S.W. No. 04-5051. He imputes error on the part of the respondent judge for believing the applicant and his witnesses' claim that they conducted a test buy in CATT's Refilling Plant. He claims that the supposed test-buy operation was a form of an entrapment, and that had the applicant truly believed that petitioner was engaged in illegal trading at the time of the test-buy, then he should have immediately arrested the petitioner or his personnel for committing an offense in flagrante delicto. Moreover, the delay in the filing of the application for search warrants allegedly casts doubt on the existence of probable cause.

The foregoing arguments are clearly untenable. No fault can be ascribed to NBI agent De Jemil for first going to court to apply for a search warrant instead of immediately arresting the petitioner or his personnel and seizing articles at the time the test buy was conducted. This circumstance does not negate, but even bolsters the claim that he had personal knowledge of petitioner's illegal activities, and that sufficient grounds exist for the issuance of the search warrant. The lapse of thirteen (13) days from the test-buy to the application for search warrant is fairly reasonable, and is insufficient to invalidate the warrant.

Petitioner contends that there could have been no probable cause to support the application for the search warrant considering that Shell, Petron, Total Gaz and Caltex did not own the questioned LPG cylinders. We find the contention untenable. This Court finds that in general, consumers do not purchase the LPG cylinders of these corporations together with the contents thereof. Payments made by these end-users for the use of the LPG cylinder normally amount to a mere deposit, and these branded LPG cylinders still remain the properties of the gas companies. As a matter of fact, the maintenance and preservation of these cylinders are still the obligations of the companies. It is precisely the re-use and refilling of these LPG cylinders originally issued by these companies without their prior authorization that the law seeks to prevent. The respondent judge thus did not err in issuing the subject search warrant. Contrary to the assertion of the petitioner, the issuance was on the basis of the personal knowledge of complainant NBI agent De Jemil and a witness, a certain Mr. Joel Cruz, who conducted test-buys to confirm the reports on petitioner's illegal trading of LPG products. Their findings during the said operations equipped them with sufficient knowledge on the allegations they made to support the application for the search warrant.

Petitioner's allegation on the unreasonableness of the implementation of the search warrant is also untenable. The affidavit executed by Romano Sitchon[13] to prove the alleged unreasonable implementation of the search warrant is insufficient to prove the grave allegation and to invalidate the search and seizure operations conducted in the CATT Gas Plant, because he did not fully witness the said operations. What is more controlling then is the presumption of regularity in the performance of the public officers' official duty, which was not sufficiently rebutted by the petitioner. Most importantly, two (2) Barangay Longos representatives, namely Kagawad Ernest

M. Bautista and Victor E. Cruz, even signed the inventory issued by NBI agent Jarilla subsequent to the search and seizure. Two representatives of herein petitioner also signed the said inventory, without indicating any reservations on the legality of the implementation of the search warrant. The affidavit subsequently executed by Selvio Arrojo[14] on the alleged irregularities in the conduct of the search and seizure operations can hardly be given credence because as stated in the affidavit of Arrojo itself, he arrived at the CATT Gas Compound on March 5, 2004 only at about 7:45 o'clock in the evening, when petitioner himself admits, and the inventory indicates, that the search and seizure commenced at about 5:15 o'clock in the afternoon.

As to the sufficiency of the contents of the assailed Order, we hold that petitioner was not denied due process because a perusal thereof evidently shows that petitioner was duly apprised of the reasons for the denial of his motion to quash. The respective positions of the parties were also adequately presented in the order. It is thus quite absurd for the petitioner to argue that he was deprived of due process in the resolution of his motion to quash when he evidently was able to prepare the eighty-six (86) page petition for certiorari, assign specific errors against the trial court's order and discuss each of the alleged errors with particularity. In addition, courts have consistently held that the constitutional mandate that every decision shall be rendered with a clear explanation of the facts and law on which it is based applies only to decisions and final orders. It does not strictly apply to the assailed order which merely resolves petitioner's motion to quash a search warrant.

The absence in the case records of the transcript of searching questions and answers previously conducted by the judge at the time the petitioner, through counsel, initially sought a copy thereof is also insufficient to justify the quashal of the subject search warrant. It did not prove that no searching questions and answers were conducted prior to the issuance of the warrant. Notably, the records show that such proceedings were actually conducted by the trial judge and that by the time petitioner's counsel subsequently inquired with the trial court, the transcript was already attached to the records. This Court emphasizes that while the requirement that an examination by the trial judge of the complainant and the witnesses is absolute, it is not fatal to the validity of the warrant if the transcript of the examination is not immediately attached to the records of the case. It is but logical to allow the trial court a reasonable time to properly transcribe the proceedings. What is important is that the required examination was actually conducted, and the transcript of such examination later formed part of the records of the case.

All told, this Court finds no grave abuse of discretion committed by the trial court in issuing the assailed Orders. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment which is equivalent to an excess, or a lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[15] Herein public respondent did not act in such manner because his disposition of petitioner's motion to quash was founded on factual and legal bases.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Sundiam and Librea-Leagogo, JJ., concur.

[1] Rollo, p. 510.

[2] Id. at 510-511.

[3] Id. at 518.

[4] Id. at 560.

[5] Id. at 503.

[6] Id at 507.

[7] Id. at 508.

[8] Nala v. Barroso, Jr., 408 SCRA 529 (2003).

[9] People v. Tee, 395 SCRA 419 (2003).

[10] 356 SCRA 683 (2001).

[11] Joint Order, pp. 3-4; Rollo, pp. 505-506.

[12] People v. Tee, 395 SCRA 419 (2003).

[13] Annex “Q” of Petition; Rollo, p. 812.

[14] Annex “O” of Petition; Rollo, p. 809.

[15] Duero v. Court of Appeals, 373 SCRA 11 (2002).

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