

MARIA CASTRO AND CO LING, PETITIONERS, VS. HONORABLE JAVIER PABALAN, JUDGE OF THE COURT OF FIRST INSTANCE OF LA UNION, AND SGT. ERNESTO LUMANG, RESPONDENTS.*G.R. No. L-28642. April 30, 1976*

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

This Court is confronted anew in this certiorari proceeding with the claim that a search warrant issued without complying with the requisites of the Constitution^[1] and the Rules of Court^[2] should have been nullified, but was not in the challenged order of respondent Judge Javier Pabalan.^[3] More specifically, it was the failure of the application for the search warrant as well as the search warrant itself to specify the specific offense, to examine the applicant as well as his witnesses on the part of respondent Judge, and to describe with particularity the place to be searched and the things to be seized, that were singled out to justify the assertion of illegality. When required to answer, respondent Judge did not bother to refute specifically the allegations of the petition for certiorari, but merely contented himself with inviting attention to the challenged order as well as the resolutions denying the motion for reconsideration and with the statement that he "has no particular prayer to ask the Supreme Court," an assertion thereafter repeated in the second paragraph of his two-paragraph answer that he "has no request to make in this particular case leaving the issues entirely to the discretion of the Supreme Court."^[4] The tone of diffidence, almost of apology, is easy to understand. It is difficult to resist the thought that respondent Judge failed to pay heed to authoritative decisions of this Court. The most cursory perusal of the application for search warrant^[5] by respondent Lumang and the search warrant itself^[6] yields no other conclusion. Respondent Judge ignored what the Constitution requires on two points, the existence of a probable cause and the particular description of the things to be seized. The limitation as to the specific offense as mandated by the Rules of Court was not observed either. Even on the assumption then that he could not be held chargeable with knowledge of the leading Stonehill decision,^[7] announced barely twenty days before the search warrant in question was issued, still from *Alvarez v. Court of First Instance*,^[8] the first to be decided under the 1935 Constitution, promulgated in 1937, to *Oca v. Maiquez*,^[9] that came out in 1965, this Court had adhered firmly to the view that for a search warrant to escape the imputation of being unreasonable, there should be strict conformity with the requirements of the Constitution and the applicable procedural rules. The finding then should have been against the validity of the search warrant. Nonetheless, insofar as such order limited itself to requiring the return solely of the liquor, the pack of playing cards, the bottle of distilled water and five bottles of Streptomycin, all of which may be considered as personal effects of petitioners, with the rest of the goods taken falling under the category of things forbidden by law and therefore need not be restored,^[10] it can be sustained. So we rule.

In the opening paragraph of the application for search warrant, respondent Ernesto I. Lumang admitted that "he has been informed" and therefore was of the belief that petitioners Maria Castro and Co Ling, whose place of residence was not even indicated, although subsequently mention was made of their being at Barrio Padasil, Bangar, La Union, "have in possession narcotics and other contraband."^[11] There is a claim that he had verified the report and that therefore he had "reasons to believe that a Search War-rant should be issued to enable the

undersigned to take possession" of such narcotics and other contraband.[12] The application was accompanied by the joint affidavit of a Sergeant Francisco C. Molina and a Corporal Lorenzo G. Apilado of the Philippine Constabulary.[13] Again, mention was merely made of their information about narcotics and other contraband being kept by petitioners. They did allege therein that they conducted rigid surveillance, but all they could come out with is that petitioner Co Ling is an over-staying alien for almost ten years conducting such traffic and that after verification, he was not registered in the Immigration Office.[14] Then, on the very same day, July 10, 1967, the search warrant was issued for illegal traffic of narcotics and contraband.[15] Again, there was reference to the possession by petitioners of such forbidden goods. As to the complete and detailed description of the properties to be seized, the search warrant merely mentioned illegal traffic of narcotics and contraband inside the warehouse and premises of petitioners.[16] In the resolution upholding the validity of the search warrant, respondent Judge did state the following: "On July 10, 1967, Ernesto Lumang, Sgt. of the PC, with a long service behind, appeared in chamber before the Presiding Judge of Branch 1 of this Court. With him were Sgt. Molina and Cpl. Apilado both of the PC Command of La Union. The three submitted to the Presiding Judge in chamber an application for search warrant which is Exhibit I in this case and a joint affidavit supporting the search warrant asked. As Sgt. Lumang said, testifying regarding this incident, those appearing were asked, although not in writing and not recorded, on some questions by the Presiding Judge regarding their request of the search warrant on the knowledge of Molina and Apilado on the facts stated on the application and on the joint affidavit. The inquiry was brief. The barrio to be searched was handwritten in ink, Maria Cristina cancelling the typewritten name Padasil. But this correction was not done in the duplicates. Anyhow Padasil and Maria Cristina are adjoining barrios. After the routine taking of their oath and examination questions and answers, the Presiding Judge of this Branch signed the application for search warrant, the joint affidavits, and forthwith issued the search warrant which is Exhibit C." [17]

As set forth at the outset, failure to abide by both the Constitution and the procedural law in terms of the existence of a probable cause, a particular description of the property to be seized and the requirement that there be only one specific offense, is quite manifest.

1. This excerpt from the epochal opinion of former Chief Justice Concepcion in *Stonehill v. Diokno*[18] is highly relevant: "Two points must be stressed in connection with this constitutional mandate, namely: (1) that no warrant shall issue but upon probable cause, to be determined by the judge in the manner set forth in said provision; and (2) that the warrant shall particularly describe the things to be seized. None of these requirements has been complied with in the contested warrants. Indeed, the same were issued upon applications stating that the natural and juridical persons therein named had committed a 'violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code.' In other words, no specific offense had been alleged in said applications. The averments thereof with respect to the offense committed were abstract. As a consequence, it was impossible for the judges who issued the warrants to have found the existence of probable cause, for the same presupposes the introduction of competent proof that the party against whom it is sought has performed particular acts, or committed specific omissions, violating a given provision of our criminal laws. As a matter of fact, the applications involved in this case do not allege any specific acts performed by herein petitioners. It would be a legal heresy, of the highest order, to convict anybody of a 'violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code,' – as alleged in the aforementioned applications – without reference to any determinate provision of said laws or codes." [19] That same approach is reflected in the two subsequent cases of *Bache & Co. (Phil.), Inc. v. Ruiz*[20] and *Asian Surety & Insurance Co., Inc. v. Herrera*. [21] It bears repeating, as was emphasized in *Stonehill v. Diokno*, that the averments as to the alleged commission of the offenses imputed to petitioner were abstract. As admitted in the challenged order, the inquiry was brief. Subsequently, reference was made to "the routine taking of [their oath] and examination questions and

answers * * *." [22] Nor can such perfunctory manner in which respondent Judge conducted the required "examination under oath" be justified merely because respondent Lumang was "a Sergeant of the PC, with a long service behind [him]." [23] Moreover, contrary to the Rules of Court, he did not even bother to take the depositions of the witnesses in writing, attaching them to the record. [24] There was thus a manifest and palpable violation of the constitutional standard as to the quantum of proof to show the existence of probable cause, as so clearly enunciated in *Stonehill*.

2. Then again, the Constitution requires, for the validity of a search warrant, that there be a particular description of "the place to be searched and the persons or things to be seized." [25] As was admitted by the judge in the challenged resolution, there was a mistake concerning the residence of petitioners, which was set forth in the search warrant as being in Barrio Padasil when in fact it is in Barrio Maria Cristina. He would gloss over such inaccuracy by saying that they were, anyway, adjoining barrios. As to the premises to be searched, it may be admitted that the deficiency in the writ is not of sufficient gravity to call for its invalidation. Nonetheless, and again in line with *Stonehill v. Diokno*, the Constitution is quite explicit that there be a particular description of the things to be seized. That requisite was not complied with in this case. That would explain why the searching party felt it had a free hand and did take possession of various kinds of goods, including personal effects, which respondent Judge himself would have them return. What was aptly characterized as a "major objective" of this constitutional provision, the elimination of general warrants, was thus frustrated. It need not be stressed anew that this Court is resolutely committed to the doctrine that this constitutional provision is of a mandatory character and therefore must be strictly complied with. [26] To quote from the landmark American decision of *Boyd v. United States*: [27] "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*." [28]

3. Another infirmity was the failure to comply with the basic procedural requisite that a search warrant "shall not issue but upon probable cause in connection with one specific offense." [29] Here reference was made to "an illegal traffic of narcotics and contraband." The latter is a generic term covering all goods exported from or imported into the country contrary to applicable statutes. Necessarily then, more than one offense could arise from the activity designated as illegal traffic of narcotics and contraband. As a matter of fact, in the challenged order, reference was made to at least three charges having been filed, the violation of Section 203 of the Internal Revenue Code, its Section 1039 on tax evasion, as well as illegal possession of opium. It would seem that once again what was correctly pointed out by Chief Justice Concepcion in *Stonehill v. Diokno* as unjustified and unwarranted finds application. Nor can there be any plausibility to the possible excuse, to repeat what was said before, that the *Stonehill* opinion having been rendered only twenty days previous to the issuance of the search warrant, respondent Judge could not be held chargeable with a knowledge thereof, considering that as far back as July 30, 1965, two years earlier, in *Oca v. Maiquez*, [30] this Court, through the then Justice J.P. Bengzon, enunciated: "The decision herein has applied the provisions of the Old Rules of Court since this case arose under said Rules. Attention of the Bench and Bar is however called to the fact that effective January 1, 1964 the issuance of search warrants is governed by Section 3, Rule 126 of the Revised Rules of Court which among other things requires that a search warrant must be in connection with one specific offense." [31]

4. As was made clear at the outset, though, the illegality of the search warrant does not call for the return of the things seized, the possession of which is prohibited by law. This is the established doctrine in this jurisdiction. As far back as *Uy Kheytyin v. Villareal*, [32] a 1920 decision, it was held: "That although in the issuance of the search warrant in question the judge did not comply with the requirements of section 98 of General Order No. 58, the petitioners are not entitled to the return of the opium and its paraphernalia which were found and seized under said warrant, and much less are they entitled to be exonerated because of such omission of the judge." [33] Among the authorities cited is *Cooley*: "Search-warrants have heretofore been allowed to search for stolen goods, for

goods supposed to have been smuggled into the country in violation of the revenue laws, for implements of gaming or counterfeiting, for lottery tickets or prohibited liquors kept for sale contrary to law, for obscene books and papers kept for sale or circulation, and for powder or other explosive and dangerous material so kept as to endanger the public safety." [34] So, also, in *Yee Sue Koy v. Almeda*, [35] handed down in 1940, Justice Laurel, speaking for this Court, stated: "If it be true, furthermore, without, however, deciding the point, that as alleged by the respondents the articles in question constitute the corpus delicti of the Usury Law, their return to the petitioners cannot be ordered." [36] *Magoncia v. Palacio*, [37] promulgated in 1948, reiterated such a doctrine. Thus: "En el asunto de *Uy Kheylin contra Villareal* (42 Jur. Fil., 935), los recurrentes pidieron la devolucion del opio de que se incautaron los constabularios al registrar su casa armados con un mandamiento de registro expedido sin cumplir las disposiciones de los articulos 96 y 98 de la Orden General No. 58; sostenian que los requisitos exigidos por dichos articulos no se habian cumplido, y por tanto, el mandamiento de registro era ilegal, como si no existiera; que el registro se ha hecho sin mandamiento de registro debidamente expedido. Este Tribunal denego la peticion, declarando que la irregularidad de la expedicion del mandamiento de registro no era suficiente causa para ordenar la devolucion del opio. El Hon. Juez recurrido no abuso de su discrecion al denegar la devolucion al acusado del paltik, 42 municiones y una granada de mano, tampoco abuso de su sana discrecion al denegar la peticion del acusado de que se prohiba al Fiscal Provincial y al Jefe de Policia de Asingan, Pangasinan a presentar tales efectos como prueba en la vista." [38]

5. This decision leaves open the question of the legality of any possible use that may be made by the prosecuting authorities of the articles seized under an invalid search warrant. Here, again, the *Yee Sue Koy* opinion of Justice Laurel is illuminating, especially in view of the inadmissibility of evidence illegally seized under the present Constitution. [39] At this stage, the question does not have to be faced. The words of Justice Laurel follow: "While we reiterate the rule that 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 * * *, the said rule has no applicable force in the present case. * * * In the application for the issuance of the search warrant in question, it was alleged that the articles seized were 'being used by it (Sam Sing & Co.) in connection with its activities of lending money at usurious rate of interest in violation of the Usury Law,' and it is now suggested (memoranda of respondents) that the only object of the agents of the Anti-Usury Board in keeping the articles is to prevent the petitioners from employing them as a means of further violations of the Usury Law. In this state of the record, without deciding the question whether the petitioners will in fact use the articles in question, if returned, for illegal purposes, we are not prepared to order the return prayed for by the petitioners. (Cf. *People v. Rubio*, 57 Phil. 384, 394-395.)" [40]

WHEREFORE, the writ of certiorari is granted and the order of September 21, 1967 denying the motion of petitioners to annul the search warrant as well as the resolutions of October 26, 1967 and January 29, 1968 denying the motions for reconsiderations are reversed, the decision of this Court being that the search warrant in question is tainted by illegality for being violative both of the Constitution and the Rules of Court. It is likewise the decision of this Court that notwithstanding the illegality of such search warrant, the challenged order of respondent Judge can be sustained only insofar as it would limit the return of the articles seized to the liquor, the pack of playing cards, the bottle of distilled water and five bottles of Streptomycin taken under such search warrant. No costs.

Barredo, (Acting Chairman), Antonio, Aquino, and Concepcion Jr., JJ., concur.

[1] The search warrant was issued on July 10, 1967 at a time when the 1935 Constitution was still in force. As set

forth in Art. III, Sec. 1, par. (3): "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 warrant 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." Under the present Constitution, Art. IV, Sec. 3, the provision remains unaltered except for the vesting of the competence on any other responsible officer as may be authorized by law to issue a search warrant or a warrant of arrest where formerly only a judge may do so.

[2] Rule 126 of the Rules of Court defines with particularity how a search warrant may be issued. Sections 3 and 4 are particularly relevant. According to the former: "A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the municipal or city 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. No search warrant shall issue for more than one specific offense." Section 4 provides: "The municipal or city judge must, before issuing the warrant, personally examine on oath or affirmation the complainant and any witnesses he may produce and take their depositions in writing, and attach them to the record, in addition to any affidavits presented to him."

[3] Ernesto Lumang, a Philippine Constabulary Sergeant who applied for the search warrant, was included likewise as a respondent.

[4] Answer of Respondent Judge Pabalan dated February 28, 1968.

[5] Petition, Annex A.

[6] Ibid, Annex B.

[7] *Stonehill v. Diokno*, L-19550, June 19, 1967, 20 SCRA 383.

[8] 64 Phil. 33.

[9] L-20749, July 30, 1965, 14 SCRA 735.

[10] Cf. *Uy Kheylin v. Villareal*, 42 Phil. 886 (1920); *Magoncia v. Palacio*, 80 Phil. 770 (1948).

[11] Petition, Annex A.

[12] Ibid.

[13] Ibid, Annex B.

[14] Ibid.

[15] Ibid, Annex C.

[16] Ibid.

[17] Resolution dated September 12, 1967, Ibid, Annex H.

[18] L-19550, June 19, 1967, 20 SCRA 383.

[19] Ibid, 391-392.

[20] L-32409, February 27, 1971, 37 SCRA 823.

[21] L-25232, December 29, 1973, 54 SCRA 312.

[22] Resolution, Annex H.

[23] Ibid.

[24] Cf. Rule 126, Section 3.

[25] Art. III, Sec. 1, par 3 of the 1935 Constitution.

[26] Alvarez v. Court of First Instance, 64 Phil. 33 (1937).

[27] 116 US 616 (1886).

[28] Ibid, 630.

[29] Section 3 of Rule 126 of the Rules of Court bears repeating in full: "A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the municipal or city 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. No search warrant shall issue for more than one specific offense." What cannot escape attention is that the Rules of Court twice spoke of such basic limitation of "one specific offense."

[30] L-20749, July 30, 1965, 14 SCRA 735.

[31] Ibid, 738.

[32] 42 Phil. 886.

[33] Ibid, 899-900.

[34] Ibid, 892. The citation came from Cooley on Constitutional Limitations, 7th ed., 432 (1909)

[35] 70 Phil. 141.

[36] Ibid, 148.

[37] 80 Phil. 770.

[38] Ibid, 774-775.

[39] According to Art. IV, Sec. 4. par. (2) of the present Constitution: "Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

[40] 70 Phil. 141, 147-148.

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