

MATERIAL DISTRIBUTORS (PHIL.), INC., AND HARRY LYONS, PETITIONERS, VS. FELIPE NATIVIDAD, JUDGE OF FIRST INSTANCE OF MANILA, AND LOPE SARREAL, RESPONDENTS.

G.R. No. L-1716. June 28, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

On March 24, 1947, Lope Sarreal filed a complaint (amended on April 10, 1947, to include Harry Lyons) seeking a money judgment against petitioners on three causes of action in the total of P1,256,229.30.

On May 27, 1947, Sarreal filed a motion for the production and inspection of the following documents:

"I. Books or Papers of Material Distributors (Phil.) Inc.:

"1. Cash Receipts Journal

"2. Cash Payments Journal

"3. All Individual Ledgers, specially of the following persons or entities.

"(a) British-American Engineering Corporation

"(b) Philippine Refinery

"(c) Felipe Buencamino

"(d) Luzon Stevedoring

"(e) Standard Oil Company of New York

"(f) Philippine Exchange Co., Inc.

"(g) Manila Laundry Company

"(h) Filipino Businessmen's Syndicate

"(i) Material Distributors, Inc., Wichita, Kansas

"(j) Harry Lyons

"4. All letters exchanged between Material Distributors (Phil.) Inc., Material Distributors, Inc. of Wichita, Kansas, and Harry Lyons, between October 9, 1946 and March 31, 1947.

"5. All cablegrams exchanged between Material Distributors (Phil.) Inc., and Material Distributors, Inc., Wichita, Kansas, between October 9, 1946 to March 31, 1947.

"II. Books and Papers of the defendant Harry Lyons.

"1. Letters exchanged between Harry Lyons and Material Distributors, Inc., Wichita, Kansas, between September 14, 1946 and March 24, 1947.

"2. Cablegrams exchanged between Harry Lyons and Material Distributors, Inc., Wichita, Kansas, between September 14, 1946 and March 24, 1947.

"3. Cash Receipts Journal.

"4. Cash Payments Journal."

On June 4, 1947, Sarreal filed a supplemental motion for the production and inspection of the originals of Annexes A and B of the complaint.

On June 12, 1947, petitioners filed a memorandum and opposition to Sarreal's above mentioned original and supplemental motions on the ground that he failed to show good cause and that the motions were evidently filed for the purpose of fishing evidence.

In July 16, 1947, respondent judge, granting both motions, required petitioners to produce the documents and annexes in question on July 24, 1947.

On account of the absence in the Philippines of Harry Lyons, petitioners moved, reserving whatever rights they have under the Rules of Court, to postpone the inspection of the documents and annexes in question and accordingly respondent judge postponed it to August 15, 1947.

On August 13, 1947, petitioners moved for the reconsideration of the order of July 16, on the following grounds:

"(a) Article 46 of the Code of Commerce which prohibits the delivery, communication and general examination of the correspondence of merchants, a substantial right, as well as the petitioners' right to the inviolability of their correspondence as guaranteed by the Constitution would be violated by the order requiring the production of the following documents:

"BOOKS AND PAPERS OF DEFENDANT HARRY LYONS

"(1) Letters exchanged between Harry Lyons and Material Distributors, Inc., of Wichita, Kansas, between September 14, 1946 and March 24, 1947;

"(2) Cablegrams exchanged between, Harry Lyons and Material Distributors, Inc., of Wichita, Kansas, between September 14, 1946 and March 24, 1947.

"BOOKS AND PAPERS OF MATERIAL DISTRIBUTORS (PHIL.) INC.

"(4-5) All letters and cablegrams exchanged between Material Distributors (Phil.), Inc., Material Distributors, Inc., of Wichita, Kansas, and Harry Lyons between October 9, 1946 and March 31, 1947.

"(b) That the production for plaintiff's inspection of all the foregoing documents above enumerated, as well as of the following documents, would constitute a "fishing expedition," not allowed by Rule 21 of the Rules of Court, since their materiality or probable materiality is not shown by the pleadings of the parties except by movant's bare allegations which are disputed by your petitioners:

"BOOKS AND PAPERS OF MATERIAL DISTRIBUTORS (PHIL.) INC.

"1-2. Cash Receipts Journal and Cash Payments Journal.

"3. All Individual Ledgers, specially of the following persons or entities.

"(b) Philippine Refinery.

"(c) Felipe Buencamino.

"(d) Luzon Stevedoring.

"(e) Standard Oil Company of New York.

"(f) Philippine Exchange Co., Inc.

"(g) Manila Laundry Company.

"(c) That plaintiff is not entitled to the production and inspection of the originals of Annexes A and B because his only purpose, as stated in his supplemental motion, Exhibit D, was to find out if a case of falsification has been made, that the issue between the parties in this regard is material only to your petitioners' affirmative defense, and that if plaintiff's purpose was as stated in said supplemental motion, then your petitioners claimed their privilege against self-incrimination. That this latter privilege was also claimed insofar as the production and inspection of the other documents were concerned by your petitioners in view of counsel for respondent Lope Sarreal's charge to the Honorable City Fiscal for the City of Manila that your petitioners were violating our Corporation Law."

On September 27, 1947, respondent judge denied the motion for reconsideration.

Petitioners impugn the validity of the orders of July 16 and September 27, 1947, as were issued by the respondent judge in excess of his jurisdiction or with grave abuse of his discretion, and prayed for the annulment or modification of the order of July 16, 1947.

Respondent Sarreal advance the following reasons to show that the orders complained of were not issued in excess of the trial court's jurisdiction or with grave abuse of discretion:

"(a) The motions of the respondent Lope Sarreal of May 27, 1947 and June 4, 1947 contain allegations of the ultimate fact that the "books and papers mentioned in said motions constitute or contain evidence material to the matters involved in the case and are in the possession, custody or control of the petitioners herein, and allegation to this effect is adequate showing of good cause for the production and inspection of the documents mentioned therein, being an allegation in the very words used in Form 11 of the Appendix Forms of our Rules of Court, and therefore a sufficient compliance with said Rule (Go Tianco vs. Judge Diaz, et al., G. R. L-7, January 22, 1946, reported in the June 1946 issue of the Official Gazette).

"(b) Article 46 of the Code of Commerce invoked by the petitioners does not apply to cases of production and inspection of books and papers belonging to a party to the action in which such production and inspection are sought (Decision of Supreme Court of Spain of March 30, 1894). At any rate, said Article of the Code of Commerce has been impliedly repealed by Act No. 190, pertinent portions of which are now embodied in our Rules of Court (3 Op. of Atty. Gen. 380).

"(c) Neither would, the inspection of books and papers of the petitioners amount to a violation of the inviolability of correspondence under Sec. 1, No. 5, Article III of the Constitution of the Philippines, considering that the inspection of said books and papers are sought through proper order of the trial court, and the Constitutional provision invoked by the petitioners precisely allows inspection of communication and correspondence upon lawful order of the court. Moreover, this provision of our Constitution creates no new right, being merely a re-enforcement of the Constitutional prohibition against unreasonable searches and seizures (Sinco, Philippine Government and Political Law, 4th Edition, p. 632), and when the inspection of such books and papers was allowed 'upon lawful order of the court' made through the respondent Judge, such inspection cannot be considered as unreasonable altho such books and papers are private in character (First National Bank vs. Hughes, 6 Fed., C 737, 741, appeal dismissed for want of jurisdiction in 106 U. S., 523, 27 Law ed., 268, 1 Sup. Ct. Rep., 489; Johnson Steel Street-Rail Co. vs. North Branch Steel Co., 48 Fed., 191; Victor G. Beede Co. vs. Joseph Bancroft & Sons Co., 98 Fed., 175, affirmed in 52 L.R.A., 734, 45 C.C.A.,

354, 106 Fed., 396, where this question was not involved; *Burnham vs. Morrissey*, 14 Gray, 226, 74 Am. Dec., 676; *United States vs. Terminal R. Assoc.*, 148 Fed., 486; *Re Dunn*, 9 Mo. App., 255; *Elder vs. Bogardus*, 1 Edm. Sel. Cas., 110; *Boston & M.R. Co. vs. State [N. H.]*, 77 Atl. 996; *Hopkinson vs. Burghley*, L. R. 2ch., 447; *Groker-Wheeler Co. vs. Bullock [C. C.]*, 134 Fed., 241; *Re Bolster*, 110 Pac., 547).

"(d) The inspection of said documents is not for the purpose of "fishing evidence" but with a view to enabling the respondent Lope Sarreal to designate with particularity in the subpoena duces tecum to be obtained in connection with the trial of the case on its merits the specific books and papers containing the entry of receipts and payments made by the petitioners, such books and papers, being material to the case in view, among others, of the allegations in the amended complaint that the defendants, the petitioners herein, had been remitting all or the greater volume of the proceeds from the sales of equipments and materials of the defendants in Civil Case No. 2059 outside the jurisdiction of the trial court and had been disposing of their properties with the intention of defrauding their creditors. At any rate, "fishing expedition" is allowed and is precisely contemplated in Rule 21 of our Rules of Court as a weapon of discovery (XXVI Am. Bar. Ass. Jur. No. 1, Jan. 1940, 48; *Golden vs. Arcadia Mutual Casualty Company*, D. C. 111., 1942, 2 F. R. D. 26; *Leach vs. Griff Bros. Coop. Corp.*, D. C. Miss., 1942, 3 F. R. D. 444; *Civil Aeronautics Board of Aeronautic Authority vs. Canadian Colonial Airways*, D. C., 1941, 41 F. S. 1006; *Quemus Theatre Co. vs. Warner Bros. Pictures*, D. C. N. J., 1940, 35 F. S., 949; *United Mercantile Agency v. Silver Fleet Motor Express*, D.C. Ky., 1941, 1 F. R. D., 709; *Walling vs. Richmon Screw Anchor Company*, D. C. N. Y., 1943, 4 F. R. D., 265; *Monarch Liquor Corp. vs. Schenley Distillers Corp.*, D. C. N. Y., 1941, 2 F. R. D., 51; *Walsh vs. Comm. Mutual Life insurance Company of Hartford, Conn. [1939]*, 26 F. Supp., 556; *Olson Transportation Company vs. Socony Vacuum Oil Company*, 7 F. R. D., 234).

"(e) The originals of Annexes A and B are relevant not only to the case of the defendants but also to that of the plaintiff in Civil Case No. 2059 here involved, in view of the issue of fact raised by the pleadings of the parties as to whether the originals of Annexes A and B have been falsified by the insertion therein of the names of Gil J. Puyat and Raymond Lehmann after said Annexes were signed by respondent Lope Sarreal and delivered to the petitioner Harry Lyons, in view of which respondent Lope Sarreal is entitled to the production and inspection thereof under the provisions of Rule 21 of our Rules of Court.

"(f) Even if ocular inspection of said Annexes A and B may reveal falsification thereof by the petitioners amounting to a violation of the applicable provisions of our Revised Penal Code, the petitioners cannot exempt themselves from the production of said exhibits for mere inspection and copying, inasmuch as the Constitutional prohibition against self-incrimination has been extended in specific cases only to the production of documents as evidence, and only when the person producing them is made to take the witness stand and identify them under oath, and not to the production of such documents for mere inspection (*Comm. vs. Southern Express Co.*, 1914, 160 Ky., 1, 169 SW., 517, annotated cases 1916A, 373, L. R. A., 1915B, 913; *U. S. vs. Hughes*, 12 Blatchff, 553); the reason being that the Constitutional prohibition is one against compelling a person to be a 'witness against himself', and this has been held to mean testimonial compulsion or extraction of admission from the person's own lips (4 Wigmore, 865, 2263; *Wilson vs. U. S.*, 55 Law. ed., 776, citing cases).

"(g) Moreover, the corporate records sought to be inspected are not covered by the Constitutional prohibition against self-incrimination, even though such documents may contain evidence tending to subject any or all of the officers of a corporation to a criminal indictment (*Wilson vs. U. S.* 221 U. S., 361, 51 Law ed., 771; *Oklahoma Press Pub. Co. vs. Walling*, 327 U. S., 186, 90 Law. ed., 614, 627-629; *U. S. vs. Bauch & Lamp Optical Co.*, 321 U. S., 707, 88 Law ed., 1024, 1037 [1944]; *U.S. vs. White*, 88 Law. ed., 1547).

"(h) Production and inspection of documents have been allowed and sustained in decided cases, under Orders which were broader than those here assailed, for the production and inspection of all books of accounts, all memoranda and and records, stock book, ledger, journal, cash book, bank book, bank deposit slip, check book, voucher, contract, income tax return, booking record and correspondence (*U.S. v. Duodera*, 1 F. R. S., 466, U.

S. D. C. June 16, 1939; *Orange Country Theater Corp. vs. League*, 1 F. R. S., 448).

"(i) The respondent Judge, before issuing the Orders complained of, gave the parties full opportunity, not only to discuss the question involved by repeated oral arguments but also by written memoranda, and in the exercise of his discretion issued the Orders complained of only after full consideration of all the questions of fact and law involved."

The production and inspection of documents and books here in question call for the interpretation and application of section 1 of Rule 21, which reads as follows:

"SECTION 1. Motion for production or inspection; order.—Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just."

Petitioners contend that in filing his original and supplemental motions, Sarreal has failed to show good cause for the issuance of the requested order. It appears, however, in the original motion of May 27, 1947, that the books and papers therein mentioned "constitute or contain the evidence material to the matters involved in the above entitled case."

In the supplemental motion of June 4, 1947, it is alleged that there is direct conflict between the allegations of the complaint and amended complaint and those of the answer and amended answer as to whether or not the names of Gil J. Puyat and Raymond W. Lehmann appear in any part of the originals of Annexes A and B of the complaint, and plaintiff Sarreal wanted the production and inspection of said originals to show that they did not contain the names of Gil J. Puyat and Raymond W. Lehmann, and that if said names should appear now typed in said Annexes A and B, said additional names must have been typed by direction of Harry Lyons without the knowledge or consent of Sarreal and after said originals were delivered by Harry Lyons and filed by the latter and that the changes so introduced are a forgery.

With these allegations in the original and supplemental motions Sarreal has fulfilled the requirement of showing good cause for the production and inspection of the books and documents in question under Rule 21.

Petitioners contend that the order of the trial judge violated petitioners' constitutional right against self-incrimination.

We have considered carefully the reasons advanced by petitioners in their pleadings and memoranda in support of this allegation and we found nothing in them to show how, without the inspection of Annexes A and B of the complaint, petitioners may incriminate themselves. We have, therefore, to dismiss such contention.

Petitioners contend that the orders complained of trampled upon petitioners' right to the inviolability of the correspondence and communication as guaranteed by the following provisions of the Constitution:

"(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 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. (Sec.

1, Art. III, Constitution of the Philippines.)

"(5) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise." (Sec. 1, Art. III, Constitution of the Philippines.)

The orders in question, issued in virtue of the provisions of Rule 21, pertain to a civil procedure that cannot be identified or confused with the unreasonable searches prohibited by the Constitution. But in the erroneous hypotheses that the production and inspection of books and documents in question is tantamount to a search warrant, the procedure outlined by Rule 21 and followed by respondent judge place them outside the realm of the prohibited unreasonable searches. There is no question that, upon the pleadings in the case, Sarreal has an interest in the books and documents in question, that they are material and important to the issues between him and petitioners, that justice will be better served if all the facts pertinent to the controversy are placed before the trial court.

The constitutional guarantee of privacy of communication and correspondence will not be violated, because the trial court has power and jurisdiction to issue the order for the production and inspection of the books and documents in question in virtue of the constitutional guarantee making an express exception in favor of the disclosure of communication and correspondence upon lawful order of a court of justice.

After a careful consideration of the legal questions raised by petitioners, this Court has arrived at the conclusion that the trial judge, in issuing the order of July 16, 1947, has not exceeded his jurisdiction or acted with grave abuse of discretion.

Petition denied with costs against petitioners.

Moran, C.J., Paras, Feria, Tuason, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted for this decision.

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