

**LOURDES MARCELO, DOING BUSINESS UNDER THE NAME AND
STYLE “KANEBO LABORATORY”;
PETITIONER-APPELLEE, VS. HON. JOSE C. DE GUZMAN, IN HIS
CAPACITY AS PRESIDING JUDGE OF BRANCH III O...**

G.R. No. L-29077. June 29, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This is a direct appeal to this Court, perfected before the effectivity of Rep. Act 5440, from the decision of the Court of First Instance of Rizal, which set aside the order of the City Court of Quezon City, denying the appellee's petition to quash a search warrant issued in connection with Criminal Case No. 558.

The position taken by the appellants herein is that the said order of the City Court of Quezon City is final in character and, therefore, not correctible by certiorari and mandamus, but only by appeal.

The antecedent facts are not disputed. At about 3:00 o'clock in the morning of June 21, 1966, Sgt. Alejandro Quirante, a PC officer detailed with the Presidential Agency on Reforms and Government Operations, PARGO for short, applied with Judge Jose C. de Guzman, presiding judge of the City Court of Quezon City, Branch III, for a search warrant to search the premises of the KANEBO Laboratory at No. 55 Times St., Quezon City. The application was filed in connection with Criminal Case No. 558, wherein, curiously enough, the " KANEBO Laboratory" was named as accused.[1]

Attached to the application were the affidavits of one Bruno Goot[2] and Leonardo Salome.[3] Judge de Guzman forthwith issued the search warrant applied for.[4]

Armed with said warrant, agents of the PARGO, led by Capt. Reynaldo San Gabriel and Sgt. Alejandro Quirante, proceeded to the premises of the KANEBO Laboratory, owned by appellee Lourdes Marcelo, and then and there seized various goods and articles consisting of perfumes, essences, pomades, demi-johns, drums, packages of various sizes containing bottles of perfume and pomade. They also seized certain commercial documents and papers.

On November 17, 1966, Marcelo filed a motion seeking to quash the warrant and to recover the seized articles and documents.[5] In a minute order dated December 5, 1966, Judge de Guzman denied the motion for lack of merit.[6]

Her motion for reconsideration having been likewise denied, Marcelo filed in the Court of First Instance of Rizal a petition for certiorari and mandamus against Judge Jose C. de Guzman, Bartolome Cabangbang, in his capacity as chairman of the PARGO, Capt. Reynaldo San Gabriel, Sgt. Alejandro Quirante and their agents, deputies and/or representatives, praying that the warrant in question be declared null and void and that the personal properties seized thereunder be res-tored to her.

The petition was given due course and, after the answer of respondents was filed, the case was submitted for resolution on the bases of the parties' pleadings and memoranda.

Thereafter, the court a quo issued a decision, setting aside the search warrant and ordering the return of the seized properties.

In ordering the restitution of the seized articles to the appellee, the lower court rationalized its posture thus:

"The affidavits of the two witnesses of the applicant do not clearly draw the offense supposed to have been violated by the herein petitioner nor describe and identify the personal things to be seized aside from the fact that it includes vague articles, such as, panel delivery trucks, books of account and other papers relative to commercial transaction. x x x The said search warrant No. 558 was issued by the respondent judge without ascertaining the probable cause in connection with one specific offense, as there was no showing as to when the specific offense was supposed to have been committed and as to under what circumstances. Moreover, it is noted by the court that Sec. 11 of Rule 126 was not strictly followed by the respondent judge because in the said section, the police officer must deliver the property to the justice of the peace or the judge of the municipal court or judge of the court of first instance, which issued the warrant, together with the true inventory thereof duly verified under oath. There was no showing in the records of this case that there was an inventory conducted and that there was delivery made to the presiding judge of Branch III, the respondent judge herein, of the warrant subject of this petition.

"IN VIEW OF THE FOREGOING, search warrant no. 558 of the City Court of Quezon City issued by Hon. Judge Jose de Guzman is declared null and void, and the properties seized pursuant to said search warrant are ordered to be returned to the lawful owner, the herein petitioner."

The above findings, which we consider final and binding, are not disputed by the appellants. Neither do they challenge the lower court's conclusion that the warrant in question was illegally issued. The lone error assigned by the appellants is that -

"the lower court erred in entertaining the petition for certiorari, mandamus and recovery of personal property filed by petitioner (appellee herein) considering that the orders of the respondent judge (City Judge de Guzman) are not interlocutory, but final in character and, therefore, the remedy is appeal."

It is indeed a well established principle that an interlocutory order is not appealable until after the rendition of the judgment on the merits. This rule of practice and procedure, constituting one of the basic precepts of our remedial law, is embodied in Section 2, Rule 41 of the Rules of Court:

"Sec. 2. Judgments or orders subject to appeal. - Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other."

x x x x x x x x.

The evident reason for the rule proscribing appeal for an interlocutory order is to avoid multiplicity of appeals in a single action.[7]

But is the order of Judge de Guzman denying the motion to quash the search warrant and to return the properties seized thereunder final in character, or is it merely interlocutory? In *Cruz vs. Dinglasan*[8], this Court, citing American jurisprudence, resolved this issue thus:

"Where accused in criminal proceeding has petitioned for the return of goods seized, the order of restoration by an inferior court is interlocutory and hence, not appealable; likewise, a denial, by the US District Court, of defendant's petition for the return of the articles seized under a warrant is such an interlocutory order. (56. C.J.

1253)."

A final order is defined as one which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined; on the other hand, an order is interlocutory if it does not dispose of a case completely, but leaves something more to be done upon its merits.[9] Tested against this criterion, the search warrant issued in Criminal Case No. 558 is indisputably of interlocutory character because it leaves something more to be done in the said criminal case, i.e., the determination of the guilt of the accused therein.

Expressly announced in Section 1, Rule 65 of the Rules of Court is the general rule that certiorari is available where a tribunal or officer exercising judicial functions "has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law."

In the light of the findings of the lower court, herein above quoted, it is indisputable that Judge de Guzman gravely abused his discretion in issuing the said search warrant. Indeed, he acted whimsically and capriciously when he ignored the explicit mandate of Section 3, Rule 126 of the Rules of Court that "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"; and that "no search warrant shall issue for more than one specific offense."

The utter disregard by Judge de Guzman of the requirements laid down by the said rule renders the warrant in question absolutely null and void. It has been held that where the order complained of is a patent nullity, a petition for certiorari and mandamus may properly be entertained despite the existence of the remedy of appeal.[10]

Moreover, an appeal from the order of Judge de Guzman would neither be an adequate nor speedy remedy to relieve appellee of the injurious effects of the warrant. The seizure of her personal property had resulted in total paralization of her business, and recourse in appeal would have unduly delayed recovery of the articles and documents which had been impro-perly seized. Where the remedy of appeal cannot afford an adequate and expeditious relief, certiorari can be allowed as a mode of redress to prevent irre-parable damage and injury to a party.

WHEREFORE, the petition is hereby denied. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

Aquino, J., concurs because mandamus is the proper remedy for the return of the objects seized under a void search warrant (Alvarez vs. CFI, 64 Phil. 33; Garcia case, 65 Phil. 689).

[1] p. 16, Original Record.

[2] p. 11, Original Record.

[3] p. 18, Ibid.

[4] p. 15, Ibid.

[5] pp. 19-21, Ibid.

[6] p. 28, Ibid.

[7] Sitchon vs. Provincial Sheriff of Negros Occidental, 80 Phil. 397.

[8] 83 Phil. 333.

[9] Ocampo vs. Republic, 9 SCRA 440.

[10] Perlas vs. Concepcion, 34 Phil. 559, 561; Director of Lands vs. Sta. Maria, 44 Phil. 594, 596; Director of Lands vs. Gutierrez-David, 50 Phil. 797; Clemente vs. Lucban, 53 Phil. 931, 934.

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