

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. GUILLERMO P. VILLASOR, IN HIS CAPACITY AS PRESIDING JUDGE, COURT OF FIRST INSTANCE OF CEBU, BRANCH I, AND ERNESTO DACAY, RESP...

G.R. No. L-26828. November 28, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

On January 15, 1966, four (4) search warrants, issued by respondent Judge Guillermo P. Villasor, directed NBI Agents: (1) Antonio Aragon, to search an "[u]nnumbered Warehouse in Lapu-lapu St. x x x Cebu City" and to take possession of fraud-ulently imported goods, wares, merchandise, articles and others as well as receipts, invoices, letters, correspondence, papers and other documents pertinent to fraudulent importations, in violation of Section 3602, Republic Act 1937;^[1] (2) Salvador de Leon, to search an [u]nnumbered residence of Ernesto Dacay in N. Escario St. x x x Cebu City" and to take possession of property similar to those just mentioned; and Sancho K. Chan, Jr., (3) in one search warrant, to search premises "No. 292-294 (DACAY ENTERPRISES) in Magallanes St. x x x Cebu City", and seize fraudulently imported goods, merchandise, articles, and documents pertinent to such fraudulent importation, in violation of Section 3602 of Republic Act 1937, and (4) in the other, to search the same premises but to take possession of "journals, ledgers, sales and purchase invoices, order slips, delivery receipts, books of accounts and other papers and documents, entries of which are at variance with each other, in violation of Sec. 336 in relation to Sec. 355, as amended, of the NIRC."

On the same day that the search warrants were issued, NBI agents searched the premises described in the respective warrants. But, as the NBI agents later on were to testify, they failed to see and seize any of the goods or articles specifically mentioned in the search warrants. Carted away were goods different from those described in the search warrants. Taken from the premises also were assorted documents and books. All of these were inventoried and receipted for. At first in the pos-session of NBI, the goods, documents and books seized were, by court order of July 9, 1966, turned over to the Clerk of Court.^[2]

The raid conducted by NBI Agent Sancho K. Chan, Jr. requires elaboration. While the search warrants were being served at Dacay's premises, Nos. 292-294, Magallanes Street, Cebu City, Dacay's counsel was in court with a motion to strike down the two warrants. Counsel argued that "the oaths supporting the application for the issuance of the search warrants or the affi-davits for the issuance of the search warrants are so general in that they do not describe the quantity, quality and other particulars of the goods and the nature of the books to be seized so that the said Ernesto Dacay is at a loss to determine what are to be seized."^[3] Promptly on the same day, January 15, 1966 - while Agent Chan was serving the search warrant - the court issued what it termed a "Clarificatory Order", in part reading:

“x x x In other words, the peace officers concerned should conduct the search in a proper manner and take possession only of articles specifically mentioned, namely, bolts, or rolls of suiting materials, motorcycles,

fish-ing hooks, bandanas (ladies scarf), ladies nylon stockings, which have been fraudulently imported and should not seize other articles not mentioned or those which have been legally imported, considering that according to the evidence presented, this defendant is a licensed general merchandise importer. So also, with respect to the term 'other documents' the same must necessarily refer to the words or to the documents enumerated immediately preceding pertinent to the goods fraudulently imported." [4]

A fifth search warrant simultaneously issued, this time by the Municipal Judge of Mandawe, Cebu, directed NBI Agent Ricardo P. Robles, Jr. to search Dacay's bodegas located in Barrio Tipolo, Mandawe, Cebu. Agent Robles carted away several bales of cloth, allegedly remnants. After examination by the customs authorities and payment of the corresponding customs duties, they were released to Dacay. A reexamination of these goods by customs officials was conducted at Pier 2 of the Port of Cebu. These bales were eventually brought to Cebu PC Head-quarters for storage and safekeeping. Said goods were later ordered returned to Dacay under bond. Dacay was directed to leave with the Deputy Clerk of Court representative samples of the contents of each bale.

Came Civil Case R-9288 of the Court of First Instance of Cebu ("Ernesto Dacay, Petitioner, versus Alejandro E. Mendoza, etc., et al., Respondents"), for mandamus. This case came about because Dacay sought the return of the goods seized by Agent Robles. His claim was that the search warrant was null and void. Having been rebuffed by the Mandawe municipal judge, he instituted the mandamus proceedings just adverted to. Judgment was, on May 28, 1969, rendered by Judge Alfredo C. Laya of the Cebu Court of First Instance declaring that the search warrant in question did not describe with particularity the things to be seized, and ruling that said warrant was null and void. That decision has become final, no appeal therefrom having been taken.

Back to the four searches made at Cebu City. The seized goods, books and documents were examined and evaluated by agents of the Bureau of Internal Revenue and the Bureau of Customs who recommended prosecution of Ernesto Dacay for a number of offenses. But the only complaint which reached the court was that initiated by the Bureau of Internal Revenue for violation of Section 336 in relation to Section 355 of the National Internal Revenue Code (Criminal Case V-10839, Court of First Instance of Cebu, entitled "People of the Philippines, Plaintiff, versus Ernesto Dacay, Accused"). In essence, the information, filed on January 27, 1966, averred that Dacay willfully and feloniously kept records and subsidiary books of accounts pertaining to his business written in Chinese characters without attaching thereto a true and complete translation into either English, Spanish or a native dialect, and also made entries pertaining to said business in his books written in Chinese characters which are in material variance with corresponding entries in his other books or records written in English, Spanish or native dialect. Criminal Case V-10839 was, on August 15, 1969, decided by Cebu court of first instance Judge Santiago O. Tañada. The verdict was one of acquittal for Ernesto Dacay.

Meanwhile, Dacay took steps to nullify the four search warrants issued by the Cebu court of first instance and to get back the seized goods, books and documents. To this effect was his motion of January 26, 1966 in an unnumbered criminal case of the Court of First Instance of Cebu. Thereafter, on March 18, 1966, he amended this motion to stop the NBI, the State Prosecutor, the City Fiscal of Cebu, and the Commissioners of Internal Revenue and Customs from using as evidence any of the goods, books and documents seized. Dacay there contended that said goods, books and documents were different from those described in the search warrants. Upon the issues joined by the People's opposition, a hearing was had. The trial court, on July 25, 1966, issued an order, the dispositive part of which is as follows:

"WHEREFORE, the amended motion to declare the search and seizure illegal, and to return the goods and documents seized is in the main denied, except in those cases where the articles seized belonged to third parties or were not the ones described in the warrant. It is therefore ordered and decreed that the searching officers concerned, or their assistants and successors, return immediately to their respective owners the articles described in Items Nos. 1 to 9, of Exhibit 'A', same as Exhibit '6-A' (page 87 of Record), Items 1, 4, 6 to 75 of

Exhibit 'T-5' (page 103 of Record), and Items II-A to II-EE of Exhibit 'T-2' (page 99 of Record)."

The People appealed to the Court of Appeals from the order just quoted "insofar as the said Order directs and decrees, as follows: 'x x x It is therefore ordered and decreed that the searching officers concerned, or their assistants and successors, return immediately to their respective owners the articles described in Items Nos. 1 to 9, of Exhibit 'A', same as Exhibit '6-A' (page 87 of Record), Items 1, 4, 6 to 75 of Exhibit 'T-5' (page 103 of Record), and Items II-A to II-EE of Exhibit 'T-2' (page 99 of Record)."[5] This case was docketed in the Court of Appeals as CA-G.R. 07473-Cr.

Dacay in turn moved for a reconsideration of the order just adverted to,[6] later amended to a motion for new trial.[7] Dacay's main contentions were that the guidelines issued by the Court of First Instance of Cebu in its order of July 25, 1966 were not followed by NBI agents Salvador de Leon with respect to the documents listed in the inventories designated as Annexes B, B-1 and C, and Sancho K. Chan, Jr. in reference to those in Exhibits P-1, P-2, T-4 and 4-A to 4-H. He prayed for the nullification of the searches and the return of the documents. The court, ruling on Dacay's motion, issued the order of September 22, 1966 thus -

"WHEREFORE, the motion for new trial filed by the defendant is granted. Set this case for further hearing on October 17, 1966, at 2:30 P.M. and every afternoon thereafter until finished, and for this purpose the custodians of the documents listed in the inventories of NBI Agents de Leon and Chan, Jr. are required to bring to Court such documents as will be sufficient for examination at that particular time."

Failing in its move to reconsider, the People went direct to this Court on certiorari and prohibition with prayer for a writ of preliminary injunction. We issued a temporary restraining order on November 17, 1966. This is the first of the two cases now before us: G.R. L-26828 ("People of the Philippines, Petitioner, versus Honorable Guillermo P. Villazor, in his capacity as Presiding Judge, Court of First Instance of Cebu, Branch I, and Ernesto Dacay, Respondents.")

The appeal taken by the People of the Philippines from the order of July 25, 1966 heretofore transcribed was, on September 7, 1968, resolved by the Court of Appeals. The appellate court affirmed in toto respondent judge's order. Not satisfied, the People brought the case up to this Court on petition for review by certiorari. This is G.R. L-29567, entitled "People of the Philippines, Petitioner, versus Ernesto Dacay and Honorable Court of Appeals, Respondents" - the other case now under consideration. Both G.R. L-26828 and L-29567 are ripe for decision.

On August 19, 1969, respondent Ernesto Dacay moved to dismiss the two cases just cited, upon the ground that the issues raised therein have become moot and academic. The Solicitor General opposed. We are now called upon to decide the cases and to rule on the motion.

Dacay's motion to dismiss is founded mainly on his acquittal in Criminal Case V-10839 of the Court of First Instance of Cebu, and on the judgment, also final, of the same court in Civil Case R-9288 nullifying the search warrant issued by the municipal judge of Mandawe. There is also the fact that the goods seized by NBI agents by virtue of the search warrants heretofore mentioned were destroyed by the fire which gutted the Constabulary bodega in Cebu City.

1. To be recalled is that G.R. L-29567 is an appeal taken by the People from the judgment of the Court of Appeals which affirmed in toto the order of the Court of First Instance of Cebu directing that the "searching officers concerned, or their assistants and successors, return immediately to their respective owners the articles described in Items Nos. 1 to 9, Exhibit 'A', same as Exhibit '6-A' (page 87 of Record), Items 1, 4, 6 to 75 of Exhibit 'T-5' (page 103 of Record), and Items II-A to II-EE of Exhibit 'T-2' (page 99 of Record)."[8]

Exhibit A or 6-A is an inventory of the things seized by NBI Agent Antonio Aragon in the bodega of Dacay

Enterprises at Lapu-Lapu Street, Cebu City. Listed therein are one bale of clothing materials, several cases of handkerchiefs, four cases of men's socks.

If only for one reason, the case as to the properties seized by NBI Agent Aragon should be dismissed. It is because these goods have been destroyed by fire which razed the PC bodega in Cebu City. Since said goods (see Exhibit A or 6-A) no longer exist, then nothing there is to discuss in L-29567. There are no more articles to return.

G.R. L-29567, as to the goods seized by NBI Agent Aragon, has become moot and academic.

Upon the merits, the People's petition for review in L-29567 is as vulnerable. In the judgment of the Court of Appeals subject of review, the appellate court found that -

"x x x there is not even a single iota of evidence disclosing that the articles actually seized by the raiding team of Aragon were in fact imported; much less was it proven that they have been fraudulently brought into this country through its backdoor. It may sound trite but in this jurisdiction the presumption of law is always in favor of innocence; who-ever alleges otherwise assumes the burden of proof -- something which the State miserably failed to accomplish in this instance. This becomes more so in view of the fact that the goods consisting of clothing materials, hand-kerchief, men's socks and packing lists, seized by Aragon are not illegal articles per se. Considering that in this country we also have a good number of textile mills which are legi-timately engaged in the manufacture of clothing materials, handkerchiefs, and men's socks, the possibility that those confiscated goods were locally produced is not too remote at all so as to be lightly discounted. Consequently, since there is no positive evidence showing even prima facie that the merchandise taken and seized by Aragon from the bodega of the Dacay Enterprises were illegally imported goods, their seizure and confiscation have no basis both in fact and in law." [9]

We are bound by the foregoing finding. We have held in *Moreno vs. Ago Chi*, 12 Phil. 439, 442, that "[i]f the property was in no way connected with the commission of the offense, at the termination of the trial it is the duty of the court to order the officer in possession of the same to return it to the defendant."

The result is the same. G.R. L-29567 should be dis-missed.

2. G.R. L-26828, it will be remembered, is a special civil action for certiorari and prohibition instituted by the People. It is directed against respondent judge's order of September 22, 1966 granting respondent Dacay a new trial. In said new trial, what Dacay seeks is the return of the documents, books and papers listed in Exhibits B, B-1 and C and Exhibits P-1, P-2 and T-4 and also those in Exhibits 4-A to 4-H.

Exhibits B, B-1 and C are inventories of books and docu-ments (mainly delivery receipts, ledgers, columnar books, journals, folders and checkbook stubs) seized by NBI Agent Salvador de Leon allegedly for violation of Section 3602 of the Tariff and Customs Code. Exhibits 4-A to 4-H are inventories of papers and documents such as bills of lading, commercial and consular invoices, packing lists, letters and telegrams to suppliers abroad, price lists of suppliers abroad, sales notes and certificates of origin. They were seized by NBI Agent Sancho K. Chan, Jr. also allegedly for violation of Section 3602 of the Tariff and Customs Code. Retention of Exhibits B, B-1 and C and 4-A to 4-H is sought by the State because they constitute relevant evidence to prosecute the case for such infractions.

Coming now to Exhibits P-1, P-2 and T-4. As aforesaid, these, together with Exhibits T-2 and T-5, are inventories of books and documents seized by NBI Agent Sancho K. Chan, Jr. purportedly for violation of another statutory provision - Section 336 in relation to Section 355 of the National Internal Revenue Code. Included in the inventories are journals, ledgers, trial balances, cash invoices, official receipts and other documents seized "a) [f]rom the Office, Adjacent to the Office of Ernesto Dacay, Air-conditioned Room - Exhibit '4-G-Dacay', consisting of three pages and contain-ing Items 1 to 27; [10] b) [f]rom the Office of the Accountant, Second Floor,

Adjacent to the Office of Ernesto Dacay, consisting of two pages, containing Items 1-A to 2-0;[11] c) [f]rom the Office of Mrs. Mary Uy Dacay and Conchita Sy, located at the First Floor, Air-conditioned Room, consisting of six pages and containing Items 1 to 75;[12] d) [f]rom the Office, Adjacent to the Office of Mr. Dacay, Air-conditioned Room, consisting of one page and containing Items 1 to 16;[13] e) [f]rom the Office of the Accountant, Second Floor, Adjacent to the Air-conditioned Inner Office of Mr. Dacay, consisting of two pages and containing Items II-A to II-EE,[14] both for alleged violations of Sec. 3602, Customs and Tariff Code, R.A. 1937 and of Sec. 336 in relation to Sec. 355, Revised National Internal Revenue Code (Exhibits 'P-1', 'P-2', 'T-2', 'T-4' and 'T-5' - Order of July 25, 1966)."[15]

The State would want to prevent return of possession of the documents seized by Chan. And amongst these are Items 2, 3 and 5 of Exhibit T-5 - three books of accounts written in Chinese language - which were not ordered returned by the trial court to Dacay.

The State argues that these documents would show that there was no translation of the Chinese books of accounts into English, Spanish or local dialect, and that, therefore, Dacay would be open for prosecution for violation of Section 336 in connection with Section 355 of the National Internal Revenue Code.

The flaw in this argument is that Dacay was actually prosecuted for violation of Section 355, in connection with Section 336 of the National Internal Revenue Code, precisely in reference to Items 2, 3 and 5 (Chinese books of accounts) in Exhibit T-5. And he was acquitted.

There was no necessity then to retain the documents mentioned in Exhibits P-1, P-2 and T-4, and those other documents appearing in Exhibit T-2 and the rest of those in Exhibit T-5.

As for Exhibits P-1, P-2 and T-4, it bears remembering that in the prosecution against Dacay in Criminal Case V-10839, solely the three books of accounts in Chinese (Nos. 2, 3 and 5, Exhibit T-5) were presented. The documents and papers covered by Exhibits P-1, P-2 and T-4 were intended to be utilized in said case to prove the averment in the information that there was no translation at all of those books into English, Spanish or any local dialect. But said documents and papers were never offered in evidence therein. No need therefore there is to retain the items covered by Exhibits P-1, P-2 and T-4.

Five years have elapsed since the searches and seizures. No criminal prosecution was ever presented by the State against Dacay except that involved in Criminal Case V-10839 of the Court of First Instance of Cebu for failure to have his Chinese books translated into English, Spanish or local dialect. But in that case, he was acquitted. Since then, no attempt has ever been made by the State to further prosecute Dacay in relation to the books, papers and documents taken by the government men.[16] It was the duty of the State either to institute such action as it may deem proper or to return the properties to their owners. An unreasonable length of time has passed. Nothing has been done. Because no further action has been taken against Dacay, the properties so seized should be returned to their owners.[17]

It thus results that there exists no further cause or reason why the two cases now before us should not be dismissed: L-29567 on the merits and because the questions therein involved have become moot and academic; and L-26828, it appearing that the petition for certiorari and prohibition is without merit.

For the reasons given, these two cases (G.R. L-29567 and G.R. L-26828) are hereby dismissed, and in consequence the temporary restraining order issued in L-26828 is dissolved. Without costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, and Fernando, JJ., concur.
Teehankee and Barredo, JJ., did not take part.

[1] Republic Act 1937 is otherwise known as the Tariff and Customs Code of the Philippines. Section 3602 thereof refers to "Various Fraudulent Practices Against Customs Revenue."

[2] Rollo of L-26828, pp. 264, 265.

[3] Id., p. 304.

[4] Id., pp. 99-100.

[5] Id., p. 172.

[6] Id., p. 173.

[7] Id., p. 178.

[8] The items in Exhibits T-2 and T-5 are to be discussed in relation to G.R. L-26828.

[9] Rollo of L-29567, p. 42.

[10] Rollo of L-26828, pp. 59-61.

[11] Id., pp. 57-58.

[12] Id., pp. 86-91.

[13] Id., pp. 92-93.

[14] Id., pp. 55-56.

[15] Id., pp. 387-388.

[16] See: Certifications of: Provincial Fiscal of Cebu dated February 15, 1969; City Fiscal of Cebu dated February 17, 1969; Clerk of Court of First Instance of Cebu dated February 15, 1969.

[17] *Magdaluyo vs. Acting Director, NBI (Resolution)*, 10 SCRA 604, 607 (1964).

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