

**JOSE G. LOPEZ AND TOMAS VELASCO, PETITIONER, VS.
COMMISSIONER OF CUSTOMS OF DAVAO, CHAIRMAN OF THE ASAC,
ACTING DIRECTOR, NATIONAL BUREAU OF INVESTIGATION, CITY
FISCAL OF DAVAO, ...**

G.R. No. L-27968. December 03, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

This Court, understandably and appropriately in the decision of cases coming before it, is called upon to act with due care to avoid putting obstacles to the governmental policy "to minimize, if not to do away entirely, with the evil and corruption that smuggling brings in its wake ***." [1] Nonetheless, the steps taken by administrative authorities to implement such a laudable objective must not be repugnant to nor in conflict with constitutional rights. To be more specific, when the guarantee against unreasonable search and seizure is invoked, there is a need to scrutinize the facts rigorously to preclude any infringement thereof. In this special civil action for certiorari, prohibition and mandamus which arose from the seizures made by the Collector of Customs of Davao of 1,480 sacks of copra and 86 sacks of coffee from the M/V motor vessel Jolo Lema, our decision of November 29, 1974 in *Nasiad v. Court of Tax Appeals* [2] made clear that there was no failure to comply with the requirements of the law in effecting the same. The seizure was therefore declared lawful by the Court of Tax Appeals, and its decision was affirmed by us. [3] The only question left then is whether the search conducted by a party headed by respondent Earl Reynolds, Senior NBI Agent of Davao, [4] without the search warrant for the hotel room of petitioner Tomas Velasco, who entered into a contract with the other petitioner, Jose G. Lopez, the awardee of such Philippine Reparations Commission vessel, for its operation and use ostensibly for fishing, [5] is violative of such constitutional provision. [6] The defense interposed by respondents is that there was consent. A careful scrutiny of the pleadings reveals that such indeed was the case. We find for respondents and dismiss the action.

The relevant facts as found in the aforesaid *Nasiad* decision read as follows: "As noted in the appealed decision, the issue submitted 'for resolution is the legality of the seizure made by the Collector of Customs of Davao of the 1,408 sacks of copra and 86 sacks of coffee allegedly owned by the petitioners.' Then came this portion: 'Petitioners claim that the 1,408 sacks of copra and 86 sacks of coffee in question were purchased in Kiamba, Lumatín, and Lumasal, all in the province of Cotabato, from a certain Osmena Juanday. Petitioners contend that, inasmuch as the said goods were not imported and of foreign origin, they are not legally subject to seizure and forfeiture. They likewise contend that the forfeiture made by the Collector of Customs of Davao was invalid because the said forfeiture was based on documents and papers which were illegally seized by agents of the Government through violence and intimidation. Respondent denies petitioners' claim. He contends that the evidence is sufficient to hold that the goods in question came from Indonesia and subsequently brought to the Philippines in violation of our laws and, therefore, subject to forfeiture; and that the Indonesian documents and papers allegedly secured illegally by the combined team of NBI, PC and RASAC agents stationed in Davao, were

in fact lawfully and validly secured by them. Consequently, said documents and papers are admissible in evidence in the forfeiture proceedings instituted administratively by the Collector of Customs of Davao.' It was then set forth: 'The voluminous [evidence] of record clearly show that M/V [Jolo Lema] had been under strict surveillance by the combined team of agents of the NBI, PC, RASAC, and City Police of Davao prior to its apprehension at a private wharf in Batjak, Sasa, Davao City; that the said M/V [Jolo Lema] was skippered (sic) by Capt. Aquilino Pantinople and chartered by Mr. Tomas Velasco; during the period from the latter part of August to September 18, 1966, the said vessel was in Indonesian waters where it loaded copra and coffee beans from Taruna, Pitta, and Mangenito, all of Indonesia ***; that in its trip to Indonesia it brought various merchandise from the Philippines which were exchanged and/or bartered for copra and coffee beans and subsequently taken to Davao City ***; and that said vessel passed Marore, Indonesia on September 18, 1966 on its way to Tahuna, Indonesia *** before proceeding to Davao City where it was apprehended on September 19, 1966.' Then came the reference to the evidence and the testimonies of the witnesses of both parties, being appraised by respondent Court, which did not find any ground to discredit the finding of respondent Collector of Customs. As therein pointed out: 'The evidence does not show any plausible motive for respondent's witnesses to falsify the truth because they represent different agencies of the government. From all appearances, they have no personal interest whatsoever over the goods subject of the forfeiture proceedings. Besides, petitioners have not adduced any evidence showing that they were enemies of the witnesses for the government. In short, no iota of evidence was ever presented by the petitioners to destroy the integrity of the government witnesses and to cast a cloud of doubt on their testimonies.' Also: 'The decision of the Collector of Customs of Davao shows that a petitioner herein and at the same time one of the claimants of the confiscated copra and coffee beans, Mr. Ernesto Lozada, is the Officer-in-Charge of the vessel M/V Jolo Lema. It is not surprising, therefore, that the members of his crew repudiated their sworn statements given to government agents.' Then, lastly: 'Moreover, petitioners failed to explain satisfactorily, much less refute the vital testimony of Fiscal Mariano Umali of the Department of Justice, Manila that the various Indonesian documents *** duly authenticated by the Indonesian Consulate in Manila, show in clear detail that the vessel M/V Jolo Lema was in Indonesia during the period from the latter part of August to September 18, 1966, and that it loaded copra and coffee beans therein before the said vessel returned to Davao City on September 19, 1966. Petitioners' failure to successfully dispute or destroy said testimony by competent and reliable evidence strongly indicates that the copra and coffee beans in question were imported from Indonesia.'"[7]

On the question of the search of the hotel room, the petition alleged that at about 3:00 o'clock in the afternoon of September 19, 1966. when the vessel was searched, a combined team of Constabulary and Regional Anti-Smuggling Center operatives headed by NBI agent Earl Reynolds raided the hotel room then being rented by petitioner Tomas Velasco without any search warrant and in the absence at the time of such petitioner Tomas Velasco or the presence of any other person, except one Teofila Ibañez. a mere manicurist of Davao City by occupation, and "forcibly opened luggages and boxes from which only several documents and papers were found, then seized, confiscated and took away the same." [8] There was this refutation of such allegation in the answer presented by respondents, represented by the then Solicitor General, [9] now Associate Justice, Antonio P. Barredo: "(a) After Captain Pantinople informed the team that petitioner Tomas Velasco, the charterer of the vessel, had other documents showing that vessel came from Indonesia carrying smuggled copra and coffee, some members of the team proceeded to the room of petitioner Velasco at the Skyroom Hotel in Davao City, to ask for said documents; (b) Although petitioner Velasco was not inside the hotel room, respondent Reynolds, after identifying himself as a police officer and after explaining his purpose, was allowed to enter the room by Mrs. Tomas Velasco who subsequently volunteered to open the suitcases and baggages of petitioner Velasco and delivered the documents and things contained therein to respondent Reynolds; *** (c) The said police team did not search the room; neither did the members thereof forcibly open the luggages and boxes nor seized and confiscated the documents and things contained therein, since that was not necessary because *** Mrs. Tomas

Velasco voluntarily opened the baggages and suitcases and gave their contents of documents and things to respondent Reynolds. Such fact is also established by the joint affidavit of PC Lt. Romeo Arceno, Angel Huertas, Gregorio Esperancilla, Wilfredo G. Agcaoli, Patricio Barnes and Lucero Cordero, a joint sworn statement of Antonio Bonotan, Vicente Dubria, Alberto Morgady and Virgilio Humol; and another affidavit of Pio Raganit and Winifredo Calamba, ***." [10]

Thus, as noted at the outset, petitioners are not entitled to the remedies prayed for.

1. There has been marked receptivity on the part of this Court to claims based on the protection of the search and seizure clause of the Constitution, whenever properly invoked. So it was made clear from the leading case of *Alvarez v. Court of First Instance*. [11] It has been thus since then. [12] Such was the case likewise under previous organic acts. [13] There is this succinct restatement of what is embraced in the guarantee in the latest case of *Lim v. Ponce de Leon*, [14] with Justice Martin as ponente: "There can be no question that without the proper search warrant, no public official has the right to enter the premises of another without his consent for the purpose of search and seizure." [15] It does not admit of doubt therefore that a search or seizure cannot be stigmatized as unreasonable and thus offensive to the Constitution if consent be shown. Such a view is implicit in *People v. Malasugui*. [16] For this immunity from unwarranted intrusion is a personal right which may be waived either expressly or impliedly. [17]

The crucial question then is whether in this instance there was consent on the part of the person who was the occupant of the hotel room then rented by petitioner Velasco. It cannot be contended that such premises would be outside the constitutional protection of a guarantee intended to protect one's privacy. It stands to reason that in such a place, the insistence on being free from any unwelcome intrusion is likely to be more marked. [18] Was there, however, consent sufficient in law to dispense with the warrant? Respondents, as previously noted, contend that there was such consent. They so alleged in their answer. Their memorandum would stress it further in these words: "Here the wife of petitioner Tomas Velasco, upon being informed of the purpose of the search by the officers, invited them to enter and search the hotel room and even voluntarily gave the documents and things requested by said officers. This fact could be gleaned from the following records of the two seizure cases involving the vessel M/V Jolo Lema and its cargo of Indonesian copra and coffee: (a) On September 19, 1966, Teofila Ibañez, wife of petitioner Tomas Velasco, issued a written statement which states that — '*** I have voluntarily and freely allowed my husband's and my personal belongings to be searched and freely gave the following items.' *** (b) On the same date, she; issued another certification which reads in part, viz.: '*** That I have voluntarily turned over for safekeeping and verification the following.' *** (c) Also on the same date, she issued still another certification which reads partially, thus: '*** that I have freely and voluntarily allowed the search of my and my husband's personal belongings and turn-over to the NBI of the following items.' *** (d) On October 13, 1966 the Davao City Police Department issued a certification to the effect that the petitioner Tomas Velasco never filed any 'report for robbery or other offenses *** against any member of the NBI or the PC during the period from September 19, 1966 to the present,' *** "[19] Their memorandum likewise included as an annex an affidavit from Benjamin Doronal Y. Yañez, the assistant manager of the Skyroom Hotel. It was worded thus: "That on September 19, 1966 at around 3:00 to 4:00 o'clock in the afternoon, a joint NBI, PC and Davao City Police Commando Team conducted a search on Room 220 of the Skyroom Hotel occupied by Mr. and Mrs. Tomas Velasco; That before said search was conducted, [Teofila Ibañez], the actual occupant of the room at the time, voluntarily consented to the request of Atty. [Earl Reynolds] and Lt. [Romeo Arceno] to search their room (Rm. 220) after the latter introduced themselves by showing their respective identifications cards; That during said search, upon the request of Atty. [Reynolds] and Lt. [Arceno], [Teofila Ibañez] voluntarily opened her handbag which was found to contain a .45 caliber pistol and likewise voluntarily opened the maletas which were found to contain several papers and documents; That receipts were duly issued to [Teofila Ibañez] which

accounted for everything taken from their room (Rm. No. 220) during the search, including said .45 caliber pistol, papers and documents and that nothing was lost; That [Teofila Ibañez] signed the receipts and received copies thereof; That [Teofila Ibañez] and I were present when the said search was being conducted; That said search was conducted in a peaceful and orderly manner ***." [20]

There was an attempt on the part of petitioners to counteract the force of the above recital by an affidavit of one Corazon Y. Velasco,[21] who stated that she is the legal wife of petitioner Tomas Velasco, and another by such petitioner himself[22] reiterating such a fact and that the person who was present at his hotel room was one Teofila Ibañez, "a manicurist by occupation." [23] Their effort appurtenant thereto is doomed to failure. If such indeed were the case, then it is much more easily understandable why that person, Teofila Ibañez, who could be aptly described as the wrong person at the wrong place and at the wrong time, would have signified her consent readily and immediately. Under the circumstances, that was the most prudent course of action. It would save her and even petitioner Velasco himself from any gossip or innuendo. Nor could the officers of the law be blamed if they would act on the appearances. There was a person inside who from all indications was ready to accede to their request. Even common courtesy alone would have precluded them from inquiring too closely as to why she was there. Under all the circumstances, therefore, it can readily be concluded that there was consent sufficient in law to dispense with the need for a search warrant. The petition cannot, therefore, prevail.

2. It was set forth at the outset that the state policy of minimizing, if not doing away entirely with the festering sore of smuggling must be carried out with due respect for constitutional rights. It is a truism in law that a desirable end cannot be attained by illegal means. Whenever there is a showing, therefore, that the safeguards of the fundamental law are disregarded, more specifically the guarantee against unreasonable search and seizure, then judicial redress is appropriate. To repeat, such is not the case here. Moreover, it may likewise be added that as previously mentioned in *Nasiad v. Court of Tax Appeals*, [24] involving the very same occurrence, the only difference being that the petitioners there were the importers of the smuggled goods, this Court had affirmed the validity of the seizure proceeding. No injustice can therefore be claimed by petitioners.

WHEREFORE, the petition for certiorari, prohibition and mandamus is dismissed. Costs against petitioners.

Antonio, Muñoz Palma, Aquino, and Concepcion Jr., JJ., concur.

Barredo, J., took no part.

[1] *Asaali v. Commissioner of Customs*, L-24170. December 16, 1968, 26 SCRA 382, 385.

[2] L-29318, November 29, 1974, 61 SCRA 238.

[3] The dispositive portion of *Nasiad v. Court of Tax Appeals* reads as follows: "[Wherefore], the decision of respondent Court of Tax Appeals dated April 26, 1968 is affirmed. Costs against petitioners." *Ibid.* 245.

[4] The other respondents are the Commissioner of Customs, the Collector of Customs of Davao, the Chairman of the ASAC, the Acting Director of the National Bureau of Investigation, and the City Fiscal of Davao.

[5] Petition, par. V.

[6] At the time of the search, the provision on search and seizure reads as follows: "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." Art. III, Sec. 1, par. (3). There is a slight change in

the present Constitution, as may be seen in Art. IV. Sec. 3: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, 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."

[7] *Sasiad v. Court of Tax Appeals*, L-29318. November 29, 1974, 61 SCRA 238, 240-242.

[8] Petition, par. VII.

[9] He was assisted by the then Assistant Solicitor General, now Justice of the Court of Appeals, Pacifico P. de Castro, and the then Solicitor, now Judge, Augusto M. Amores.

[10] Answer, par. 4.

[11] 64 Phil. 33 (1937). There was the earlier case of *People v. Malasugui*, 63 Phil. 331 (1936).

[12] Cf. *People v. SyJuco*, 64 Phil. 667 (1937); *Rodriguez, v. Villamiel*, 65 Phil. 230 (1937); *Pasion Vda. De Garcia v. Locsin*, 65 Phil. 689 (1938); *Yee Sue Koyv. Almeda*, 70 Phil. 141 (1940); *Alvero v. Dizon*, 76 Phil. 637 (1946); *Moncado v. Peoples Court*, 80 Phil. 1 (1948); *Amarga v. Abbas*, 98 Phil. 739 (1956); *Oca v. Maiquez*, L-20749, July 30, 1965, 14 SCRA 735; *Stonehill v. Diokno*, L-19550, June 19, 1967, 20 SCRA 383; *Bache & Co. (Phil.), Inc. v. Ruiz*, L-32409, Feb. 27, 1971, 37 SCRA 823; *Villanueva v. Querubin*, L-26177, Dec. 27, 1972, 48 SCRA 345; *Asian Surety & Insurance Co., Inc. v. Herrera*, L-25232, Dec. 20, 1973, 54 SCRA 312; *Nasiad v. Court of Tax Appeals*, L-29318, Nov. 29, 1974, 61 SCRA 238; *Roldan, Jr. v. Area*, L-25434, July 25, 1975; *Lim v. Ponce de Leon*, L-22554, Aug. 29, 1975.

[13] Cf. Section 5 of the Philippine Bill of 1902 and Section 3 of the Philippine Autonomy Act. *U.S. v. Macaspac*, 9 Phil. 207 (1907); *U.S. v. Reyes and Esguerra*, 20 Phil. 467 (1911); *U.S. v. Addison*, 28 Phil. 566 (1914); *Uy Kheytn v. Villareal*, 42 Phil. 886 (1920); *People v. Carlos*, 47 Phil. 626 (1925); *People v. Veloso*, 48 Phil. 169 (1925); *People v. Rubio*, 57 Phil. 384 (1932); *Molo v. Yatco*, 63 Phil. 644 (1936).

[14] L-22554, August 29, 1975.

[15] *Ibid*.

[16] 63 Phil. 221(1936).

[17] Cf. *Pasion Vda. de Garcia v. Locsin*, 65 Phil. 689 (1938).

[18] Cf. *Schmerber v. California*, 384 US 75 (1966).

[19] Memorandum of Respondents, 4-5.

[20] *Ibid*, 5-6.

[21] Annex B. Memorandum of Petitioners.

[22] Annex C, *Ibid*.

[23] *Ibid*.

[24] L-29318, November 29, 1974, 61 SCRA 238.

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