

**MERLINA DIAZ Y RAMIREZ @ MERLY PALAYOK, PETITIONER, VS.
HON. FRANCISCO DIZON PANO AS PRESIDING JUDGE OF THE
REGIONAL TRIAL COURT, SAN PEDRO, LAGUNA, BRANCH 93, AND
THE PEOPLE OF...**

Ponente: LIBREA-LEAGOGO, J.

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LIBREA-LEAGOGO, J.:

Before this Court is a Petition for Certiorari[1] with prayer for issuance of temporary restraining order and/or writ of preliminary injunction dated 19 November 2013, under Rule 65 of the Rules of Court, seeking the nullification of the Orders dated 16 July 2013[2] and 20 September 2013[3] issued by public respondent Judge Francisco Dizon Pano of the Regional Trial Court of San Pedro, Laguna, Branch 93 in Crim. Case No. 12-8358-SPL, which denied the petitioner's Motion to Quash Search Warrant and the Motion for Reconsideration, respectively.

Respondent People of the Philippines ("People", for brevity) filed its Comment[4] dated 07 March 2014, to which petitioner filed her Reply[5] dated 20 March 2014. Thus, the fourth paragraph of the Resolution[6] dated 12 February 2014 is reiterated, and the Petition is submitted for decision.

FACTUAL ANTECEDENTS

An application for a search warrant was filed by PO2 Pio Pleuro Avila ("PO2 Avila", for brevity) before the Regional Trial Court of San Pablo City.[7]

On 27 April 2012, Executive Judge Agripino G. Morga ("Executive Judge Morga," for brevity) of the Regional Trial Court of San Pablo City, Branch 29-32, issued Search Warrant 97(12),[8] it appearing to his satisfaction, after examining under oath by searching questions and answers PO2 Avila, that there exists probable cause to believe that a violation of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act) has been committed and there is a good sufficient reason to believe that herein petitioner Merly Diaz @ Merly Palayok has possession and control of an undetermined amount of methamphetamine hydrochloride commonly known as shabu which she is keeping and concealing in her house at Gitna, Brgy. Cuyab, San Pedro, Laguna. The Search Warrant was addressed to any officer of the law, who is commanded to make an immediate search at anytime of the day or night, of the house aforesated and thereafter seize and bring said undetermined amount of prohibited drugs (shabu) to Executive Judge Morga, so that the same could be dealt with in accordance with law.[9]

Petitioner filed a Motion to Quash Search Warrant[10] dated 21 May 2012. She averred, inter alia, that: on 28 April 2012, pursuant to the said search warrant, elements of the San Pedro Police station searched her dwelling described as Gitna, Barangay Cuyab, San Pedro, Laguna where about 9 grams of shabu were allegedly seized; likewise searched were the premises occupied by her siblings Leomer Diaz and Leonora Diaz Nesola; an attempt to break open the door of the house of Edwin Diaz was made by the police officers but they were not able to do so; petitioner was immediately arrested and detained by the searching team for violation of R. A. No. 9165; on 02 May 2012, an inquest proceeding was conducted by Assistant Provincial Prosecutor Clarence R. Gaité and an

Information for violation of Section 11 of R.A. No. 9165, docketed as Crim. Case No. 12-8358-SPL, was filed before the RTC of San Pedro, Laguna, Branch 93 against her; she is presently detained as no bail was recommended by the investigating prosecutor; and Search Warrant No. 97 (12) partakes of the nature of a general warrant as it does not describe the place to be searched with particularity which would prevent the arbitrary and indiscriminate use of the same.

On 25 May 2012, Executive Judge Morga issued an Order^[11] forwarding the Motion to Quash Search Warrant to the RTC of San Pedro, Laguna, Branch 93 for its appropriate disposition, pertinent portions of which read:

“Pursuant to Section 14, Rule 126 of the Rules of Criminal Procedure, a motion to quash a search warrant may be filed in and acted upon by the Court where the action has been instituted.

Here, it appears that an Information for violation of Section 11 of Republic Act No. 9165 against the accused, docketed as Criminal Case No. 12-8358-SPL had already been filed before Branch 93 of this Court. In fine, then, the instant incident shall and must be resolved by Branch 93 of this Court.

WHEREFORE, let the instant motion be forwarded to the Regional Trial Court, Branch 93, San Pedro, Laguna, for its appropriate disposition.

SO ORDERED.”^[12]

Petitioner filed a Motion (To Set Motion to Quash Search Warrant for Hearing) dated 06 July 2012.^[13] Assistant Provincial Prosecutor Juliet V. Ibane filed an Objection to Motion to Quash Search Warrant^[14] dated 01 March 2013 on the ground that the search warrant is presumed to be regular unless and until the petitioner presents evidence to prove otherwise.

Herein public respondent denied the Motion to Quash Search Warrant in the first assailed Order^[15] dated 16 July 2013, which reads:

“Acting on the Motion to Quash filed by accused through counsel, with the objection thereto by the public prosecutor, the Court resolves to deny the said motion for utter lack of merit. The Court finds the description of the place as stated in the warrant sufficient as the officer with warrant can with reasonable effort, ascertain and identify the place intended to be searched.

SO ORDERED.”^[16]

Petitioner filed a Motion for Reconsideration^[17] dated 28 August 2013. In the second assailed Order^[18] dated 20 September 2013, the same was denied for lack of merit and the arraignment was set on 23 October 2013.

Hence, this Petition.

R U L I N G

Petitioner contends, inter alia, that: the acts of public respondent in denying her Motion to Quash Search Warrant and Motion for Reconsideration, despite the clear and patent defect of Search Warrant No. 97 (12), constitute grave abuse of discretion amounting to lack of jurisdiction; in her Motion to Quash Search Warrant, it was argued that Search Warrant No. 97 (12)^[19] is in the nature of a general warrant which does not describe the place to be searched with particularity thus allowing its arbitrary and indiscriminate use; the search warrant describes the place to be searched at Gitna, Barangay Cuyab, San Pedro, Laguna referring to the building where she resides;

although no particular sketch accompanied the search warrant, it would appear from the records that in support of the application for a search warrant, the informant, a certain Jericho S. Labrador, drew and submitted two (2) sketches depicting her house to be searched; when asked by the Executive Judge to draw a sketch of the inside of her house, the informant drew the floor plan of what appears to be a studio type apartment preceded by an anteroom where the entrance gate is positioned; when asked if he knew where her house is, the informant drew another sketch depicting three buildings, the largest of which, with an X, supposedly being her house; in the documents prepared by the police officers who applied for the search warrant and later enforced it, the numerals 972 (referring to the house number) was added to the address of the house on which the search warrant was implemented; the exact particular house subject of the search warrant would be #972 Gitna, Barangay Cuyab, San Pedro, Laguna; however, the said house number 972 does not appear in the address of her house as described in the search warrant; the structure referred to as house No. 972, as described in sketch number 2, is divided into five separate sub-units occupied by her and her four siblings and their respective families; although the sub-units are contiguous to each other, each sub-unit is a complete household, independent of the others and may be entered through its individual front door for ingress and egress; she attached in her Motion to Quash the sketch of the floor plan of the house and its divisions, showing the areas occupied by each families living therein; the notices and billings from electric and water utilities for each of the five different persons show exactly the same address at number 972; the information supplied by the applicant of the search warrant to the Executive Judge is wanting in particularity to distinguish and delineate the place intended to be searched from the other areas of the house occupied by the four other households; the failure of the informant to provide the Executive Judge a full and accurate picture of the place, particularly the fact that there are other families living in the other partitions of the house, led the latter to believe that the area to be searched comprised the whole building; despite the overwhelming evidence showing the patent defect of the search warrant, public respondent issued the assailed order[20] denying her Motion to Quash Search Warrant; such denial constitutes grave abuse of discretion on the part of public respondent; there is no other plain, adequate or speedy remedy in the ordinary course of law to protect her rights other than this Petition; public respondent has threatened to continue with the trial of the case and unless a temporary restraining order and/or a writ of preliminary injunction is issued, petitioner will suffer irreparable injury.

Respondent People counters that: Search Warrant No. 97 (12)[21] described the place to be searched to be at Gitna, Barangay Cuyab, San Pedro, Laguna referring to the building where petitioner resides; after the arrest, petitioner disclosed that her exact address is No. 972 Gitna, Barangay Cuyab, San Pedro, Laguna and that the structure in No. 972 Gitna, Barangay Cuyab, San Pedro, Laguna is divided into separate sub-units each occupied by petitioner and four of her siblings and their respective families; she maintains that Search Warrant No. 97 (12) suffers from a clear and patent defect since it may be considered a general warrant, which is proscribed by the Constitution; the particularity of the place described is essential in the issuance of search warrants to avoid the exercise by the enforcing officers of discretion; the rule is that a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended to be searched; police officers were able to identify the building where the petitioner actually resides even without the search warrant indicating the house number and thus seized illegal drugs found in her premises; it is readily apparent that Search Warrant No. 97 (12) passed the test of particularity; by petitioner's own admission as set forth in paragraph 12 (a, b, and c) of her Petition, the applicant for the subject search warrant described with sufficient particularity the place to be searched; the house where the subject search warrant was effected by the police officers was undeniably her house as she was caught therein with illegal drugs in her possession; thus, the police officers were able to ascertain and identify the place described in the search warrant; the filing of a petition for certiorari does not stay the trial proceedings; petitioner's prayer for the issuance of a TRO and writ of preliminary injunction must fail; to be entitled thereto, petitioner must show that she has a clear legal right, her

right has been violated, the invasion is material and substantial and there is an urgent and permanent necessity for the writ to prevent serious damage; the petitioner failed to justify the issuance of a TRO and/or WPI to restrain public respondent from proceeding with the trial of the criminal case because the first requisite for its issuance, that she has a clear legal right, is utterly lacking.

The Petition is bereft of merit.

The threshold issue in this special civil action for certiorari is whether or not public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion to Quash Search Warrant and Motion for Reconsideration.

We find in the negative. Not being entitled to the reliefs demanded in her Petition, petitioner's application for injunctive relief must perforce fail.

(A) writ of certiorari is an extraordinary prerogative writ that is never demandable as a matter of right. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[22] The burden of proof lies on petitioner to demonstrate that the assailed order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[23]

A certiorari proceeding is limited in scope and narrow in character. The special civil action for certiorari lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. Certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.[24]

Section 2, Article III of the 1987 Constitution provides:

"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 be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally 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."

Corollarily, Sections 4 and 5, Rule 126 of the Revised Rules of Criminal Procedure provide:

"SEC. 4. Requisites for issuing search warrant.- A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally 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 things to be seized which may be anywhere in the Philippines.

SEC. 5. Examination of complainant; record.- The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted."

A search warrant is defined in our jurisdiction as an order in writing issued in the name of the People of the Philippines signed by a judge and directed to a peace officer, commanding him to search for personal property and bring it before the court.[25] The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in

writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[26]

Here, the petitioner, both in her Motion to Quash Search Warrant and in the instant Petition, does not raise any question regarding compliance with the aforesaid first four requisites in connection with the issuance of Search Warrant 97 (12).xxvii As found by Executive Judge Morga in the said search warrant, viz:

“It appearing to the satisfaction of the undersigned that after examining under oath by searching questions and answers PO2 Pio Pleuro Avila, there exists a probable cause for Violation of RA 9165 which has been committed and there is a good sufficient reason to believe that Merly Diaz @ Merly Palayok has possession and control of an undetermined amount of Methamphetamine Hydrochloride, commonly known as shabu which he is keeping and concealing in his house at Gitna, Brgy. Cuyab, San Pedro, Laguna.”[28]

A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.[29]

Thus, the only matter being assailed in the instant Petition is the fifth requisite, i.e., particularity of the place to be searched. She claims that Search Warrant No. 97 (12) partakes of the nature of a general warrant as it does not describe the place to be searched with particularity.

We are unpersuaded.

A search warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid, otherwise, it is considered as a general warrant which is proscribed by both jurisprudence and the 1987 Constitution.[30] A description of the place to be searched is sufficient if the officer serving the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community.[31] A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.[32]

In this case, although the house number of petitioner's house was not indicated in Search Warrant No. 97 (12), the description of the place to be searched was sufficient as the police officers who served the same were able, with reasonable effort, to ascertain and identify the house of petitioner at Gitna, Barangay Cuyab, San Pedro, Laguna, as stated in the search warrant. It bears emphasis that informant Jericho Labrador, when asked by Executive Judge Morga, also drew sketches[33] where petitioner's house was located as well the floor plan of her house,[34] which were used by the searching team.

In fact, petitioner herself admitted in the instant Petition, viz:

“a. Search Warrant No. 97 (12) describes the place to be searched to be at Gitna, Barangay Cuyab, San Pedro, Laguna referring to the building where petitioner resides. Although no particular sketch accompanied the warrant, it would appear from the records that in support of the application for a search warrant, the informant, a certain Jericho S. Labrador drew and submitted two (2) sketches depicting the house of respondent to be searched. In sketch number 1, the supposed floor plan of respondent's house is shown while the figure in sketch number 2 apparently represents the building that correspond to respondent's house.

b. When asked by the (H)onorable Presiding Judge to draw a sketch of the inside of petitioner's house, the informant drew the floor plan of what appears to be a studio type apartment preceded by an anteroom where

the entrance gate is positioned. He was also earlier asked if he knew where petitioner's house is and answering in the affirmative, he drew another sketch depicting 3 buildings the largest with an X supposedly being petitioner's house;

c. Later, in the documents prepared by the police officers who applied for the warrant and who later enforced the same, the numerals 972 (referring to the house number to distinguish it from other houses in the immediate vicinity) was added to the address of the house on which the warrant was implemented. It now appeared that the exact particular house of the respondent subject of the search warrant would be #972 Gitna, Brgy. Cuyab, San Pedro, Laguna. xxx"[35]

As further averred in paragraphs 7 and 8 of the Petition itself, elements of the San Pedro Police Station searched the dwelling of petitioner described in the Search Warrant where about 9 grams of shabu were seized; petitioner was arrested; an inquest proceeding was conducted, and an Information for violation of Section 11 of R.A. No. 9165, docketed as Crim. Case No. 12-8358-SPL, was filed before the RTC of San Pedro, Laguna, Branch 93.[36] As keenly pointed out by respondent People, "xxx, the house where the subject search warrant was effected by the police officers herein was undeniably petitioner's house as she was caught therein with illegal drugs in her possession." [37]

Thus, as aptly found by public respondent, viz:

"x x x The Court finds the description of the place as stated in the warrant sufficient as the officer with warrant can with reasonable effort, ascertain and identify the place intended to be searched." [38]

From the foregoing disquisition, We find that public respondent did not commit grave abuse of discretion in issuing the assailed Orders which denied the petitioner's Motion to Quash Search Warrant and Motion for Reconsideration.

WHEREFORE, premises considered, the Petition is DENIED. Costs against petitioner.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Diamante and Sadang, JJ., concur.

[1] Rollo, pp. 3-13

[2] Id. at 15

[3] Id. at 16

[4] Id. at 58-68

[5] Id. at 75-82

[6] Id. at 50

[7] Id. at 5

[8] Id. at 48

[9] Id.

[10] Id. at 17-23

[11] Id. at 31

[12] Id.

[13] I d. at 32-34

[14] Id. at 35

[15] Id. at 15

[16] iId.

[17] Id. at 36-39

[18] Id. at 16

[9] Id. at 48

[20] Id. at 15

[21] Id. at 48

[22] Ebrencio F. Indoyon, Jr. v. Court of Appeals, G.R. No. 193706, 12 March 2013

[23] Spouses Augusto G. Dacudao and Ofelia R. Dacudao v. Secretary of Justice Raul M. Gonzales of the Department of Justice, G.R. No. 188056, 08 January 2013

[24] Winston F. Garcia v. Court of Appeals, et al., G.R. No. 169005, 28 January 2013

[25] HPS Software and Communication Corporation, et al. v. Philippine Long Distance Telephone Company (PLDT), et. al., G.R. Nos. 170217 & 170694, 10 December 2012, citing Malaloan v. Court of Appeals, G.R. No. 104879, 06 May 1994, 232 SCRA 249

[26] Ruben del Castillo @ Boy Castillo v. People of the Philippines, G.R. No. 185128 [Formerly UDK No. 13980], 30 January 2012

[27] Rollo, p. 48

[28] Id.

[29] Ruben del Castillo v. People of the Philippines, supra

[30] HPS Software and Communication Corporation, et al. v. Philippine Long Distance Telephone Company (PLDT), et. al., supra

[31] People of the Philippines v. Estela Tuan y Baludda, G.R. No. 176066, 11 August 2010

[32] Ruben del Castillo v. People of the Philippines, supra

[33] Rollo, pp. 24-25

[34] Id. at 64

[35] Id. at 6-7

[36] Id. at 5

[37] Id. at 65

[38] Id. at 15

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