

TOMAS P. DE VERA, PETITIONER, VS. HON. ANDREW P. DULNUAN, AS PRESIDING JUDGE OF RTC-BRANCH 31, CABARROGUIS, QUIRINO, AND OFFICE OF THE PROVINCIAL PROSECUTOR, PROVINCE OF QUIRINO...

Ponente: BARZA, J.

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BARZA, J.:

This Petition for Certiorari under Rule 65 of the Rules of Court seeks to nullify and set aside the Resolution[1] dated 27 September 2013 of the public respondent, Hon. Andrew P. Dulnuan, Presiding Judge of Branch 31, Regional Trial Court, Cabarroguis, Quirino, denying petitioner's Motion to Quash Search Warrant and to Suppress Evidence in Search Warrant No. 03-2013. The petition also assails the Resolution dated 8 November 2013 of the public respondent, denying the motion for reconsideration.

The facts are, as follows:

Police Officers Oliver B. Sibayan, Mervin delos Santos and Dick Navalta of the Philippine National Police (PNP), Diffun Police Station in Diffun, Quirino, filed an Application for Search Warrant[2] on 8 August 2013 before the Regional Trial Court of Cabarroguis, Quirino, against petitioner Tomas De Vera a.k.a Oting for Violation of PD 1866, as amended by R.A. No. 8296 (Illegal Possession of Firearm and Ammunition).

The application alleges that the police officers after having been informed and after conducting the corresponding verification and investigation, confirmed that the petitioner, of legal age and a resident of Barangay Cajel, Diffun, Quirino, has in his possession and control properties which are subject of the offense, to wit:

- a. One (1) Ingram automatic caliber 9mm;
- b. One (1) NORINCO .45 caliber pistol with SN 648232;
- c. Two (2) Shotguns (12 gauge);
- d. One (1) 22 caliber long barrel with silencer
- e. One (1) 32 caliber pistol; and
- f. Several rounds of live ammunitions.

The application further alleges that the said police officers have reason to believe that a Search Warrant should be issued to enable them to take custody and bring to the court the above-described items. On the same date, after personally examining under oath the applicants and their deponent witness Julionito Noquiao y Oflos[3] that there is probable cause to believe that a violation of Violation of PD 1866, as amended by R.A. No. 8296, has been committed and is still being committed and that there are good and sufficient reasons to believe that the petitioner has in his direct possession and control the above-described items, respondent Judge granted the application and issued the search warrant.[4]

On even date at 10:00 o'clock in the morning, the police officers effected the search on petitioner's residence and junkshop located at Barangay Cajel, Diffun, Quirino. In their Joint Affidavit of Arrest[5] Police Officers Delos Santos, Wigan, Jr., Elegado and Lioad stated that the search, which was witnessed by Brgy. Captain Samuel Abenoja and Edwin Ducos of DWRV, yielded the following properties without legal documents, to wit:

- One (1) pc Colt Cal. .32 revolver with engraved serial number 429346;
- One (1) pc homemade Cal. 9mm. pistol;
- One (1) pc Norinco Cal/.45 pistol with engraved serial number 648232;
- One (1) magazine for 9mm with Six (6) live ammunitions;
- One (1) Magazine for Cal. 45 with Five (5) pcs live ammunitions;
- One (1) pc Magazine for Cal. 22 with Four (4) pcs live ammunitions;
- One (1) pc Armscor air pistol converted Cal. 22;
- One (1) pcs Armscor air pistol converted Cal. 22;
- One (1) pc live ammunition for Cal. 30;
- One (1) pc fired empty cartridge for Cal. 30;
- One (1) pc fired cartridge for Cal. 22;
- One (1) pc fired cartridge for Cal. 38;
- One (1) pc live ammunition for magnum cal. 22;
- Two (2) pcs live ammunitions for Cal. 22;
- One (1) pc scope with markings Tasco 4x20;
- Two (2) pcs unserviceable air soft pistol with one (1) pc magazine;
- One (1) side holster for 9mm. pistol
- Two (2) pcs live ammunitions for gauge 12 shotgun and assorted parts of air soft.

After the conduct of the search, all the seized and confiscated items were displayed on a table in the presence of the petitioner, and the two (2) witnesses, Brgy. Capt. Abenoja and Mr. Ducos, for inventory. When the searching team handed a copy of the certification of orderly search and receipt/inventory of property seized to the petitioner, the latter refused to receive the same. The barangay captain was requested by Police Officer Elegado to receive the copy. Thereafter, the police officers effected the arrest of the petitioner.

Petitioner sought quashal in a Motion to Quash Search Warrant with Motion to Suppress Seized Evidence[6] on the following grounds:

- The search warrant is a nullity for want of probable cause that respondent (herein petitioner) violated PD 1866, as amended by R.A. No. 8296 in violation of Sec. 3, Rule 126 of the New Rules of Criminal Procedure; and
- The search warrant is null and void considering that the applicants and their lone witness have no personal knowledge as regards violation of PD 1866, as amended by R.A. No. 8296 as prescribed under the Rules of Criminal Procedure.

Petitioner asserts that there is no probable cause to issue the search warrant in this case considering that the records of the case is bereft of any proof that petitioner does not have the license or permit to possess. At the time of the application for the search warrant, all the applicant police officers did not have personal knowledge of the fact that the petitioner had no license to possess firearms as required by law. The police officers allegedly failed to state this in their testimonies. They also failed to attach a certification from the Firearms and Explosives Office of the PNP. As argued, jurisprudence[7] dictates that the certification is the best evidence obtainable to prove that petitioner has no license or permit to possess a firearm. There was also no explanation given why said certification was not presented, or even no longer necessary, during the application for the warrant. Such vital evidence, according to the petitioner, was simply ignored in the issuance of the search warrant, which made the said warrant null and void.

In further praying for the quashal of the search warrant, the petitioner also argues that the police officers who applied for the said warrant have no personal knowledge as to whether or not the petitioner is in possession of the firearms stated in their application. It would appear from their testimonies that they were informed by their assets. Petitioner also points out that the lone deposition witness in the person of Julionito Nocquiao, is a false or perjured witness whose identity does not exist as duly certified by the Barangay Captain of Gayong, Cordon, Isabela, where he allegedly resides.

The Office of the Provincial Prosecutor of Quirino filed its Comment on the Motion to Quash[8]. In disagreeing with the Motion, the Prosecution points out that there is no Information filed yet in this case. As explained, a motion to quash is the proper way of objecting to an Information for insufficiency on its face in point of law, or for defects which are apparent in the face of the information. It is also pointed out by the Prosecution that even if the Motion be treated as a Motion to Suppress Evidence under the Rules, still the said motion cannot stand the test of scrutiny as the petitioner's allegations in the said motion are matters of defense which are best ventilated in a full blown trial.

As regards the allegation that no probable cause exists in the issuance of the search warrant, the Prosecution alleged that the police authorities were already armed with a document that the petitioner is not a licensed/registered firearm holder prior to the application of the search warrant on 9 August 2013. A memorandum submitted by the PNP Intelligence Group at Camp Adduru, Tuguegarao City, dated 27 June 2013 was issued by the Firearms and Explosive Office of the Quirino Police Provincial Office on 1 August 2013, certifying to the effect that petitioner Tomas De Vera of Brgy. Cajel, Diffun, Quirino, is not a licensed/registered firearm holder.

Anent the allegation that the search warrant issued by the court in this case was based on the perjured statement of a non-existing person, the Prosecution argues that whether the name of the deponent is fictitious or not, the same could not in any way affect the material statement contained in the allegations that petitioner has in his possession unlicensed firearms. It is also submitted that the name of the deponent, whether fictitious or not, would not greatly affect the application for search warrant as the same is not a material matter, especially so that an informer's identity is never divulged because of the need to preserve their cover so they can continue their invaluable service to the police.

In the assailed Resolution of the public respondent dated 27 September 2013, the public respondent judge held that there is probable cause for the issuance of the search warrant in this case. As explained, even prior to the application of the search warrant, the police authorities were already armed with a document from the PNP to the effect that the petitioner is not a licensed or registered firearm holder. This is supported by the personal knowledge of deponent Julionito Nocquiao that the petitioner is in possession of the firearms subject of the search warrant.

The public respondent judge also held that as regards the alleged false and perjured witness in the person of Julionito Nocquiao, it has already been ruled[9] that, such allegation even if true and credible, is not at all material or necessary to the determination of probable cause. In agreement with the comment made by the prosecution, the public respondent judge explained that the material matter, that is, the main fact which is the subject of inquiry by the court in this case, is whether the petitioner has in his possession unlicensed firearms. The name of the deponent, whether fictitious or not, should be given scant consideration as the same is not a material matter for purposes of procuring a search warrant.

Reconsideration[10] was sought but was subsequently denied in the Resolution dated 8 November 2013.

Hence, this petition on the following issues:

I

THE PUBLIC RESPONDENT JUDGE HAS COMMITTED GRAVE ABUSE OF DISCRETION OR HAS EXCEEDED HIS JURISDICTION IN REFUSING TO QUASH SEARCH WARRANT IT ISSUED AGAINST TOMAS DE VERA ALIAS OTING ON 8 AUGUST 2013 FOR VIOLATION OF PD 1866 AS AMENDED BY RA 8294 ON THE GROUND THAT PROBABLE CAUSE HAS NOT BEEN SUFFICIENTLY ESTABLISHED.

II

THE OFFICE OF THE PROVINCIAL PROSECUTOR OF THE PROVINCE OF QUIRINO IS ACTING WITH GRAVE ABUSE OF DISCRETION OR EXCEEDED HIS JURISDICTION IN CONTINUING WITH THE PROCEEDINGS IN NPS DOCKET NO. II-09-INQ-13G-000034 AGAINST TOMAS P. DE VERA ON THE BASIS OF ILLEGALLY SEIZED PIECES OF EVIDENCE.

Petitioner maintains that the search warrant issued by the public respondent judge is not valid and that there is no basis for the criminal proceedings with the Provincial Prosecutor of the Province of Quirino.

The Office of the Solicitor General (OSG) filed its Comment to the petition for the public respondent. The OSG asserts that contrary to petitioner's argument, the public respondent judge did not act with grave abuse of discretion in issuing the assailed Resolutions which denied petitioner's motion to quash the search warrant as probable cause was duly established by the police officers who applied therefor. The State posits that the power to issue search warrant is exclusively vested in the trial judges in the exercise of their judicial functions. A finding of probable cause which would merit the issuance of a search warrant needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. The determination of whether probable cause exists to justify the issuance of a search warrant is best left to the sound discretion of a judge.

As the petitioner failed to show any error so grave, capricious or whimsical as to oust the public respondent judge of his jurisdiction, the Office of the Provincial Prosecutor of the Province of Quirino may legally continue its proceedings in NPS Doc. No. 11-09-INQ-13G-000034 against the petitioner, in relation to the criminal complaint filed against him based on the validly confiscated firearms and ammunitions by virtue of the duly issued search warrant.

The petition is bereft of merit.

Petitioner once again raises the issue that no probable cause exists to justify the issuance of the search warrant as the applicant police officers have no personal knowledge of the lack of license of the petitioner to possess firearms. In support of this argument, petitioner brings to the attention of the Court the rulings of the Supreme Court in the cases of Nala and PICOP[11].

In the case of Nala, an application for search warrant in connection with alleged illegal possession of firearms was sought by the police officers applicants, which the trial court granted. Quashal of the search warrant was subsequently denied, wherein one of the issues raised is the existence of probable cause for the issuance of a search and seizure warrant against the petitioner therein. In ruling that no probable cause existed, the Supreme Court, citing the case of Nala, found that nowhere in the affidavit and testimony of the witnesses-applicants was it mentioned that the petitioner therein had no license to possess a firearm. Mere testimony to that effect does not suffice or qualify as personal knowledge but only personal belief because the applicants did not secure a certification from the appropriate government agency that the petitioner was not licensed to possess a firearm. This certification was held to be the best evidence obtainable to prove that the petitioner had no license to possess firearms and ammunitions, but the police officers failed to present the same.

The Court, however, does not find any reason to decree the invalidity of the search warrant in this case. The requisite probable cause for the issuance of a search warrant existed in this case. Contrary to the Nala and PICOP cases, the applicants in the instant case did not merely state that the petitioner did not have the license to possess the firearms. Personal knowledge was duly established when the public respondent judge conducted the searching questions on the applicants wherein it was revealed that:

“x x x

Court:

So it is your asset who said that this person Tomas de Vera alias Oting is offering this .45 caliber pistol and other described firearms for sale. Did you not try to send somebody to buy?

SPO Sibayan:

We validated that information from the Firearms Licensing Division at Camp Crame and we came to know that those firearms are unregistered, sir.

Court:

All of them?

SPO1 Sibayan:

All those guns, sir.

x x x”[12]

Corollarily, in a previously held decision by the Supreme Court, it was held that:

“In the case at bar, NBI Agent Timoteo Rejano who applied for the issuance of Search Warrant Nos. 56-93 and 57-93, had personal knowledge of the circumstances on which the warrants were based. Admittedly, Rejano’s knowledge of petitioner’s illegal possession of firearms and prohibited drugs came from a confidential informant, and therefore, initially hearsay. Nevertheless, the surveillance and investigation he conducted on the basis of said confidential information enabled him to gain personal knowledge of the illegal activities of petitioner. Hence, his testimony was sufficient justification for the examining judge to conclude that there was probable cause for the issuance of a search warrant.”[13]

Section 4, Rule 126 of the Revised Rules of Court provides:

Section 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 things to be seized which may be anywhere in the Philippines.

The Supreme Court had the occasion to explain probable cause as follows:

“In the issuance of a search warrant, probable cause requires such facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and the objects sought in connection with that offense are in the place to be searched.

There is no exact test for the determination of probable cause in the issuance of search warrants. It is a matter wholly dependent on the finding of trial judges in the process of exercising their judicial function. They determine probable cause based on “evidence showing that, more likely than not, a crime has been committed and that it was committed” by the offender.”[14]

Thus, as correctly held by the public respondent judge in the 8 November 2013 Resolution:

“x x x

The certification that petitioner de Vera has no license to possess firearms is not the only evidence necessary to determine probable cause. x x x Admittedly, this Court did not require the presentation of the certification from the Firearms Licensing Division because the testimonies of the police officers and the deponent were sufficient enough to establish that, indeed, petitioner de Vera has no license to possess firearms. The lack of license to possess firearms is a fact which can be proved by any competent evidence, in this case the testimonies of the police officers and the deponent, not necessarily and solely the certification that petitioner has no authority to possess firearms.”

This declaration notwithstanding, it is well to note that in the Comment of the Prosecution, through the Provincial Prosecutor's Office of Quirino, proof that petitioner is not a licensed or registered firearm holder had been obtained or existed even before the application for the search warrant.

At this point, it must be emphasized that “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.”[15] It is presumed that a judicial function has been regularly performed, absent a showing to the contrary,[16] as in this case.

It is a settled rule that the remedy of certiorari is limited to the correction of errors of jurisdiction”[17]. The case of *People vs. Court of Appeals*[18] explained, thus:

The special civil action for certiorari is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. As observed in *Land Bank of the Philippines vs. Court of Appeals, et al.*: the special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The *raison d'être* for the rule is when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a scenario, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision - not the jurisdiction of the court to render said decision - the same is beyond the province of a special civil action for certiorari. (emphasis supplied)

Considering the above disquisition, the Court likewise finds no reason to issue the writ of certiorari upon petitioner's claim that the Office of the Provincial Prosecutor of the Province of Quirino committed grave abuse of discretion in proceeding with the criminal case in NPS Docket No. 11-09-INQ-13-00034. To reiterate, no grave abuse of discretion attended the issuance of the assailed Resolutions of the public respondent judge denying quashal of the search warrant in this case. Necessarily, as correctly argued by the OSG, the Office of the Provincial Prosecutor of the Province of Quirino can proceed with the investigation and the filing of the information against the petitioner.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Carandang, R. D., Chairperson, and Reyes-Carpio, A., JJ., concur.

[1] Rollo, pp. 123-128

[2] Rollo, pp. 157-158

[3] Deposition of Witness, Rollo, pp. 159-160

[4] Rollo, pp. 111-112

[5] Rollo, pp. 162-163

[6] Rollo, pp. 113-122

[7] Citing Paper Industries Corporation of the Phils. vs. Asuncion, 307 SCRA 253 and Nala vs. Barroso, 408 SCRA 529

[8] Rollo, pp. 164-166

[9] Citing Abuan vs. People of the Philippines, G.R. No. 168773, October 27, 2006

[10] Motion for Reconsideration, Rollo, pp. 129-132

[11] Supra, Note No. 7

[12] TSN, August 8, 2013, p. 6, Rollo, Annex "M", p.175

[13] Cupcupin vs. People of the Philippines, G.R. No. 132389, November 19, 2002

[14] Worldwide Web Corporation vs. People of the Philippines, G.R. No. 161106, January 13, 2014

[15] People vs. Estela, G.R. No. 176066, August 11, 2010 citing People vs. Tee, G.R. Nos. 140546-47, January 20, 2003

[16] Supra, Note No. 14

[17] Ortiz vs. Court of Appeals, G. R. No. 157370, June 8, 2007

[18] G. R. No. 142051, February 24, 2004

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