

NELSON K. DY, NORMAN K. DY, LINDSAY KAREN DY, NAPOLEON K. DY, NORA K. DY, NANCY K. DY LILIBETH K. DY, NKD INTERNATIONAL TRADING CORPORATION AND NPW INTER-NATIONAL TRADING CORPOR...

Ponente: SABIO, JR., J.

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SABIO, JR., J.:

No presumption of regularity maybe invoked by an officer to justify an encroachment of rights secured by the constitution. A strict interpretation of the constitutional, statutory and procedural rules authorizing search and seizure is required and strict compliance therewith is demanded (People vs. Go, 411 SCRA 81) (underscoring for emphasis).

Challenged for having been issued with grave abuse of discretion are: (1) the eight (8) search warrants issued by public respondent Judge of RTC, Branch 24, Manila on March 17, 2005; (2) the May 27, 2005 order of said public respondent denying petitioner's very Urgent Motion to Quash Warrants and/or Suppress Evidence obtained thereof and; (3) the September 7, 2005 order denying petitioner's motion for reconsideration thereon.

The material antecedents as culled from the records:

On March 17, 2005, private respondent PNP Pol. Insp. Ramon B. Golong, filed four (4) separate applications for issuance of search warrants. On the same date, public respondent Judge issued eight (8) search warrants:

On March 21, 2005 Respondent Golong, accompanied and assisted by his subordinate policemen, representatives of Respondent Corporation and several other persons, simultaneously swarmed on and ransacked Petitioner's business establishments and bodegas situated in various locations. They carted away truck loads of various items and merchandise solely belonging to and owned by Petitioner Nelson K. Dy.

On March 28, 2005, before transcription of the stenographic notes of the proceedings on the application for issuance of the search warrants, Petitioners filed their Very Urgent Motion to Quash Search Warrants and/or Suppress Evidences Obtained Thereof (Annex "C"). The seized properties were paid to Petitioner Nelson Dy by his bankrupt creditors, and were seized from the premises under his sole control and supervision. The rests of the Petitioners have nothing to do with such items. They have not bought, sold or vended any of the items or automotive spare parts described in the Search Warrants.

After transcription of the stenographic notes several days later, Petitioners discovered that Respondent Golong's application for, and Respondent Judge's issuance of the subject search warrants suffer from inherent defects or infirmities which are reversible errors.

Finding necessity to amplify the grounds for their aforesaid urgent motion, after receipt of complainant's opposition thereto, Petitioners filed a Reply to Opposition to Quash, dated April 22, 2005 (Annex "F"). Specifically, they pinpointed out to the Honorable Court the serious defects and irregularity in the application for as well as in the issuance and implementation of the search warrants.

(Rollo, pp. 8-9)

With the denial of their Motions to Suppress and Motion to Quash as well as their Motion for Reconsideration, petitioners now come to Us via this instant petition anchored on the following, to wit:

“GROUNDS RELIED UPON FOR THE RELIEF

I.

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE QUESTIONED SEARCH WARRANTS, WHICH WERE IRREGULARLY APPLIED FOR AND ILLEGALLY ENFORCED BY RESPONDENT GOLONG AND HIS MEN.

II.

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE ORDER DATED MAY 27, 2005, DENYING PETITIONERS' VERY URGENT MOTION TO QUASH THE SEARCH WARRANTS AND/OR SUPPRESS EVIDENCES OBTAINED THEREOF.

III.

RESPONDENT JUDGE AUBSED HIS DISCRETION OR ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION IN HOLDING, WITHOUT CONDUCTING PRIOR HEARING, THAT PETITIONERS' MOTION FOR RECONSIDERATION IS BEREFT OF MERIT.”

(Rollo, pp. 11-12)

Petition has merit.

The constitutional requirements of a valid search warrant are:

- (1) It must be based on probable cause;
- (2) The probable cause must be determined personally by the judge;
- (3) The determination must be made after examination under oath or affirmation of the complainant and the witnesses he may produce;
- (4) It must particularly describe the place to be searched and the persons or things to be seized.

According to Rule 126, Sec. 4 of the Rules of Court, the judge before issuing the search warrant, must “personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce [on facts personally know to them] x x x. (underscoring for emphasis). Based on said Rule, therefore, the evidence that should be offered by the complainant and his witnesses should be based on their own personal knowledge and not on mere information or belief. Hearsay is not allowed.

In the case at bench, it is very clear that the application was not based on personal knowledge but on hearsay. Consider how the application for the warrant was worded:

“COMES NOW, undersigned applicant, POLICE INSPECTOR RAMON B. GOLONG, a member of the Anti-Organized Crime and Businessmen's Concern Division, Criminal Investigation and Detective Group (CIDG), Philippine National Police (PNP), Camp Crame, Quezon City, after having been duly sworn to in accordance with law do hereby depose and say:

1. That he has been informed and verily believes that the respondents have in their possession, control and custody certain goods that are used in commerce and consists of.” (underscoring for emphasis).

(Rollo, p. 1)

Thus, in the case of *Alvarez vs. CFI*, 64 Phil. 33, the Supreme Court annulled a search warrant issued on the strength of an affidavit based on “reliable information” which according to the affiant was “correct to the best of his knowledge and belief. It was noted that “he did not swear to the truth of his statements upon his own knowledge of the facts but upon the information received by him from a reliable person (Constitutional Law, Justice Isagani Cruz, 2003 Edition, p. 150). In the case before us, the search warrant failed to comply with the 3rd constitutional requirement for the issuance of a valid search warrant which is that it was based on alleged facts not personally known to the applicant.

Additionally, before issuing the warrant, the judge did not propound searching questions on the alleged witnesses presented. Although there is no hard and fast rule as to how a judge may conduct his examination, it is axiomatic that said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory (*Roan vs. Gonzales*, 145 SCRA 687, cited in *Pp vs. de los Reyes*, 441 SCRA 305). (underscoring for emphasis). He must make his own inquiry on the intent and factual and legal justification for a warrant. The questions should not merely be repetitious of the averments not stated in affidavits/depositions of the applicant and witnesses (*Nolasco vs. Poño*, 139 SCRA 152, cited in *Pp vs. de los Reyes*, supra). If the judge fails to determine probable cause, by personally examining the applicant and his witnesses in the form of searching questions before issuing a search warrant, it constitutes grave abuse of discretion (*Silva vs. RTC, Negros Oriental, Branch 33*, 203 SCRA 140, cited in *Pp vs. de los Reyes*, supra).

As stated above, the basis of the application was hearsay on the part of the applicant and worse, he was never subjected by the issuing Judge to any searching and probing questions. As to the alleged depositions executed by the witnesses, it is all too clear that the issuing judge did not conduct searching and probing questions as well. One glaring fact is that while the alleged witnesses deposed that they conducted several test buys, the judge never bothered to ask for the names of specific stores/establishment where the test buys were made, as well as present any receipt or proof that will establish that indeed these test buys took place. (underscoring for emphasis).

First, it is clear that the applicant based his application on hearsay information. Consider his alleged deposition:

“COURT:

Q. How were you able to get all these informations?

A. Two (2) members of our team P03 Marwin Pascua and SP03 Benjamin Topacio were able to enter the subject office address and they personally witnessed

APPLICANT: (continuing)

. . . the proliferation of “555” automotive suspension and steering spare parts, plastic wrappers and packaging labels. They were also able to witness employees of the aforementioned individuals and the two (2) corporation actually packing “555” parts into the plastic wrappers and boxes.

COURT:

That is all for the applicant. Call your next witness.”

(pp. 15-16, TSN, March 17, 2005).

As to the alleged other witnesses presented, consider the foregoing deposition:

“APPLICANT:

Your Honor, my witness is P03 Marwin D. Pascua.

WITNESS IS SWORN IN:

COURT INTERPRETER: (to the witness)

Please raise your right hand.

Q: Do you swear to tell the truth, the whole truth and nothing but the truth before this Honorable Court?

A: I do

Q: State your name and other personal circumstances.

A: I am PO3 Marwin D. Pascua, married, a bonafide member of the Philippine National Police and presently assigned with the Anti-Organized Crime and Businessmen's Concern Division, Criminal Investigation and Detection Group (CIDG) based in Camp Crame, Quezon City.

COURT:

Q: What is your involvement in this case?

A: I was designated as one of the investigators in these cases Your Honor.

COURT:

Q: What do you mean by that?

A: I, together with SPO3 Benjamin Topacio, conducted the surveillance and casing operations as well as test buys. Also, we were the ones who penetrated the offices of the two (2) corporations where we actually saw the proliferation of counterfeit “555” automotive suspension and steering spare parts, and how it was being repacked, distributed and sold.

Q: In this connection, do you remember executing a sworn statement?

A: Yes, Your Honor.

COURT:

Q: I am showing you a Deposition of Witness signed by one PO3 Marwin D. Pascua, will you please examine this and tell this Court if this is the sworn statement you just mentioned?

A: Yes, Your Honor. This is the same sworn statement.

COURT:

That is all for this witness. Call your next witness.”

(pp. 16-19, TSN, March 17, 2005)

From the foregoing it is beyond dispute that the search warrant was invalidly issued, and the judge acted with grave abuse of discretion. Respondent judge ought to be minded of the Supreme Court ruling in *Mata vs. Bayona*, 128 SCRA 388, reiterated in *People vs. Mamaril*, 420 SCRA 662, thus:

“...[N]othing can justify the issuance of the search warrant but the fulfillment of the legal requisites. It might be well to point out what has been said in *Asian Surety & Insurance Co., Inc., vs. Herrera*.

'It has been said that of all the rights of a citizen, few are of great importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books and papers from inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.'

Thus, in issuing a search warrant the Judge must strictly comply with the requirements of the Constitution and the statutory provisions. A liberal construction should be given in favor of the individual to prevent stealthy encroachment upon, or gradual depreciation of the rights secured by the Constitution. No presumption of regularity are to be invoked in aid of the process when an officer undertakes to justify it."

WHEREFORE, foregoing premises considered, the petition, having merit, in fact and in law, is hereby GIVEN DUE COURSE. Resultantly, the challenged May 27, 2005 and September 7, 2005 orders of Respondent Judge are hereby ANNULLED and SET ASIDE and the issued eight (8) warrants ordered nullified, quashed and set aside. Public and/or private respondents are directed to return to petitioner Nelson K. Dy all the items seized and confiscated by them, as described and itemized in the receipts for property seized, the said itemized items being products of an invalid search warrant. No costs.

SO ORDERED.

Asuncion-Vicente and Villon, JJ., concur.

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