

## THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. PEDRO DE LA PEÑA, OSMUNDO RAMOS AND HON. RAMON SAN JOSE, RESPONDENTS.

*G.R. No. L-8474. September 30, 1955*

Ponente: CONCEPCION, J.

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### CONCEPCION, J.:

This is a petition for certiorari to set aside certain resolutions of the Court of First Instance of Manila. However, considering the allegations and the ultimate purpose of the petition, the same will be regarded as one for mandamus, in accordance with the doctrine laid down in *Guzman vs. Lichauco* (42 Phil. 291) and *People vs. Concepcion* (55 Phil. 485, 492).

Respondents, Pedro de la Peña and Osmundo Ramos, are accused, in Criminal Cases Nos. 24746 to 24755 and 24824 to 24833 (20 cases) of said court, of illegal procurement of search warrants, in violation of Article 129 of the Revised Penal Code. In the information filed in case No. 24750—the language of which is analogous to that of the information filed in the other nineteen (19) cases, except as regards the names and addresses of the respective complaining witnesses—it is averred:

"That on or about the 30th day of April, 1951, in the City of Manila, Philippines, the accused Pedro de la Peña, being then the Chief of the Special Investigating Team, and the accused Osmundo Ramos being then an agent, of the Military intelligence Service G-2, Armed Forces of the Philippines, and therefore public officers or employees, conspiring and confederating together and mutually helping each other, and pursuant to a common intent, did then and there, willfully, unlawfully and feloniously procure a search warrant without a just cause, by then and there applying for the same and filing a deposition of witness in support of the application for search warrant before the Court of First Instance, this City; and that by reason and on account of said application and deposition the said accused succeeded in procuring from the said court a search warrant against Ty Kong Tek of 142 V. Mapa St., Sta. Mesa, Manila, where a search was actually made or caused to be made by the said accused, both knowing fully well that the statements and allegations contained in the said application as well as in the said deposition were false." (Record, p. 4.)

At the joint hearing of said twenty (20) cases, before Branch IV of the Court of First Instance of Manila, presided over by respondent Judge, Honorable Ramon San Jose, the prosecution placed on the witness stand, the offended party in said case No. 24750, namely, Ty Kong Tek, who testified that, while he was in his house at 142 V. Mapa Street, Sta. Mesa, Manila, on March 1, 1951, at about 2:00 a.m., Pedro de la Peña, one of the respondents herein, and one of the defendants therein, came, accompanied by several persons, including two Chinese named Koa San and Tan Tek; that De la Peña and his companions, who were provided with a search warrant, searched the house, stating that they were looking for firearms and U. S. dollars, none of which were found in the premises; that they found, however, two (2) books of account of Ty Kong Tek for the years 1948 and 1949; that at 6:00 a.m., De la Peña took Ty Kong Tek for investigation to Camp Murphy, where he was urged to confess that he had been engaged in the exchange business and had been handling U. S. dollars, which the witness refused to admit; and

that, later, in the afternoon, De la Peña arrested the son and a nephew of the witness. At this juncture, the prosecution inquired whether he knew why his son and nephew were arrested, but, the defense objected thereto upon the ground that the question referred to an act subsequent to the issuance of the aforementioned search Warrant and, hence, immaterial to the issue. Although the prosecution explained that it sought to establish the motive of De la Peña in securing the search warrant, respondent Judge sustained the objection. Thereupon, the prosecution asked Ty Kong Tek whether he knew whether or not his above mentioned son and nephew had anything to do with the reason for the search made, in their house, by the party headed by De la Peña. The defense objected to the question upon the same ground, and the court sustained the objection.

Ty Kong Tek further stated, on the witness stand, that De la Peña investigated him six (6) times at Camp Murphy; that, during the investigation, De la Peña told Ty Kong Tek that, unless he admitted that he had dealt in U. S. dollars and engaged in the exchange of money, said respondent would arrest the son and a nephew of the witness, as they were in fact detained by De la Peña in the afternoon of March 1, 1951; that, thereafter, one of the members of the party led by De la Peña, who made a search in complainant's house, namely, Koa San,, approached the witness and told him that he, his son and his (witness') nephew would be released if he (Ty Kong Tek) gave him (Koa San) and De la Peña the sum of P20,000. On motion of the defense respondent Judge ordered the last statement of Ty Kong Tek stricken from the record.

Ty Kong Tek, likewise, declared that Koa San was sometimes present during' the investigation of the former in Camp Murphy; that after the first investigation of Ty Kong Tek by De la Peña, the former was sent to his quarters in said camp; and that Koa San then came to see Ty Kong Tek and talked to him. This statement was, also, ordered stricken out, on the motion of the defense. Moreover, the latter made of record its general objection to all questions relative to events which occurred subsequently to the issuance of the search warrant aforementioned. Although the prosecution explained that it was trying to prove the unlawful motive with which the search warrant had allegedly been obtained, respondent Judge hold that "anything that happened after that (issuance of the search warrant) will be immaterial" (p. 28, t. s. n.) Thereupon, on motion of herein petitioner, Jose G. Lukban, Director of the National Bureau of Investigation (NBI), who, as Special Prosecutor, handled the case for the Government, in collaboration with Assistant City Fiscal, Guillermo Dacumos, respondent Judge suspended the hearing, in order that the prosecution could bring the matter to this Court, for determination of the' propriety of introducing evidence of acts performed by the accused after the issuance of the search warrant in question. Hence, the present case.

Respondents herein maintain that the alleged illegal procurement of the aforementioned search warrant may be established only by proof of acts either preceding, or coetaneous with, the commission of offense charged, not by acts performed subsequently thereto. Upon the other hand, petitioner herein contends that the motive of the accused may be established by posterior acts, such as, for instance, an attempt to extort money as a condition precedent to the release of the complainant.

It is clear to our mind that said attempt to extort money, even if effected after the issuance of the search warrant, but prior to the release of the complainant, is relevant to the question whether or not said was illegally procured, owing to the obvious tendency of the aforementioned circumstance, if proven, to establish that the accused was prompted by the desire to get money from said complainant. The relevancy would be more patent if a similar attempt had been made in the other nineteen (19) cases or in some of them. It is, likewise, apparent that evidence of the intent of the party who obtained said warrant or warrants is not only relevant, but very material, where the accused are charged with having "willfully, unlawfully and feloniously procured" said process, "pursuant to a common intent," as alleged in the information filed in the cases under consideration.

Respondents insist, however, that:

"\* \* \* Our Supreme Court, in the case of *People vs. Sy Juco*, 64 Phil. 667, ruled that—malicious procurement of a search warrant under Article 129 of the Revised Penal Code is committed by a public officer who procures search warrant without just cause, and that such just cause consist of such facts and circumstances antecedent to the issuance of the warrant and not to facts subsequent (*Italics ours*)."  
(Respondent's memorandum, p. 2)

This statement is misleading. The accused in the *Sy Juco* case, cited by respondents, was not charged with illegal procurement of a search warrant. The main issues in said case was the validity of a search warrant based upon affidavits showing, on the face thereof, that the statements therein contained were hearsay. This Court answered the question in the negative. Referring to the need of a probable cause, as a condition essential to the issuance of a valid search warrant, we declared:

"\* \* \* It has likewise been held by this court that by probable cause are meant such facts and circumstances antecedent to the issuance of the warrant, that are in themselves sufficient to induce a cautious man to rely upon them and act in pursuance thereof."  
(64 Phil., 667, 674)

The words "facts and circumstances antecedent to the issuance of the warrant" had no relation whatsoever with, and were not meant to qualify, the evidence admissible to prove the illegal procurement of a search warrant, in violation of Article 129 of the Revised Penal Code, which was not in issue in the case. Said expression merely referred to the norm that should guide a Judge in determining whether or not the process should be ordered issued. It is not concerned, either with the liability of the person procuring the warrant, or with the competency of the evidence to establish his guilt.

In this connection, it may not be amiss to stress, once more, the need of adhering to the policy enunciated in the case of *Prats & Co. vs. Phoenix Insurance Co.* (52 Phil., 807, 816-817) from which we quote:

"In the course of long experience we have observed that justice is most effectively and expeditiously administered in the courts where trivial objections to the admission of proof are received with least favor. The practice of excluding evidence on doubtful objections to its materiality or technical objections to the form of the questions should be avoided. In a case of any intricacy it is impossible for a judge of first instance, in the early stages of the development of the proof, to know with any certainty whether testimony is relevant or not; and where there is no indication of bad faith on the part of the attorney offering the evidence, the court may as a rule safely accept the testimony upon the statement of the attorney that the proof offered will be connected later. Moreover, it must be remembered that in the heat of the battle over which he presides a judge of first instance may possibly fall into error in judging of the relevancy of proof where a fair and logical connection is in fact shown.' When such a mistake is made and the proof is erroneously ruled out, the Supreme Court, upon appeal, often finds itself embarrassed and possibly unable to correct the effects of the error without returning the case for a new trial— a step which the Court is always very loath to take. On the other hand, the admission of proof in a court of first instance, even if the question as to its form, materiality, or relevancy is doubtful, can never result in much harm to either litigant, because the trial judge is supposed to know the law; and it is its duty upon final consideration of the case, to distinguish the relevant and material from the irrelevant and immaterial. If this course is followed and the cause is prosecuted to the Supreme Court upon appeal, this court then has all the material before it necessary to make a correct judgment."  
(*Italics supplied*.)

Inasmuch as the prosecution was entitled to introduce the evidence in question and respondent Judge was, consequently, "under obligation by reason of his office" to admit said evidence, "and in refusing to do so \* \* \* he failed to perform his judicial duty"—in the language used by this Court in the case of *People vs. Concepcion* (*supra*)—it follows that said respondent Judge should be, as he is hereby, ordered—in line with the rule laid down in said case\_ to allow petitioner herein to prove the motive of the accused in obtaining the search warrant in question, even if the evidence therefor should refer to acts posterior to the issuance of said process, and that the resolutions of the lower court sustaining the objections to the questions above referred to, propounded by

petitioner herein, and directing that portions of the testimony of Ty Kong Tek be stricken from the record, should be, as said orders are hereby, reversed and set aside, with costs against respondents, Pedro de la Peña and Osmundo Ramos.

It is so ordered.

Bengzon, Acting C. J., Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Reyes, J. B. L., JJ., concur.

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