

**E.R. CRUZ, PETITIONER, VS. RAFAEL DINGLASAN ET AL.,
RESPONDENTS.***G.R. No. L-1545. April 19, 1949*

Ponente: BENGZON, J.

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Petitioner prays for mandamus to compel the delivery to him of a certain jeep which the respondents, officials of the National Bureau of Investigation, are holding by virtue of a search warrant issued and ratified by the other respondents, all judges of the Manila court of first instance. He avers that said search warrant is void and that he is the lawful owner of the car, having purchased it from the Government Procurement Commission.

On July 25, 1946 a Ford jeep, Motor No. G.P.W. 223169 of the Department of Justice, assigned to its Division of Investigation now—the National Bureau of Investigation—was stolen from the residence of Agent 45 in San Juan, Rizal.

On January 27, 1947, while the jeep allegedly now in question was parked on the Escolta, an operative of said Bureau spotted it and knowing it was stolen personalty, drove it to the Bureau where it was identified by Agent 45 as the same vehicle that had been taken away from his residence. Later herein petitioner Erasmo R. Cruz appeared and claimed the jeep. The officers relinquished it to him only to swear the following day before Hon. Sotero Rodas (then judge of Manila) in criminal case No. 1267 an application for a search warrant of one Ford jeep bearing plate No. 18-395, series of 1946. The jeep was again seized. But on February 1, 1947, Erasmo R. Cruz filed in court an urgent motion for its return. Judge Rodas, apparently was impressed by the fact that the chemist of the National Bureau of Investigation had been applying chemicals to the motor (obviously for the purpose of clinching its identification of the property), concluded that the Bureau was not sure of its position and directed that the vehicle be handed back to claimant Cruz.

In the meantime the National Bureau of Investigation (NBI for short) obtained better evidence of its case of theft of the automobile against Erasmo R. Cruz, et al. then pending investigation in the City Fiscal's office, and desirous of retaining the jeep as part of the corpus delicti filed another application for search warrant in criminal case No. 1288 against Erasmo R. Cruz, et al., for theft. The NBI had at that time statements of the accused. Judge Rafael Dinglasan issued a search warrant, forgone "jeep now bearing plate No. 18395 (series 1946) motor No. MVD 620 and chassis No. 203961." It was consequently carried out. Upon motion for the return of the jeep, Judge Ramon San Jose refused to modify or revoke the warrant. Upon another motion to reconsider, Judge Conrado V. Sanchez of the same court issued this order:

"It is alleged that the jeep in question was seized under search warrant issued in criminal case No. 1267, the search warrant issued in said case was quashed. The order of February 7, 1947 in criminal case No. 1267 is predicated upon the fact that the jeep, seized upon the search warrant therein issued, was not the one applied for. Needless to state, the jeep seized in the present case (criminal case No. 1288) is the very same jeep applied for herein. The order of February 7, 1947, in criminal case No. 1267 is, therefore, not controlling in the present case.

"It is also urged in behalf of defendant that the jeep seized herein is not the same jeep claimed and owned by the Division of Investigation and that the aforesaid jeep does not form part of the corpus delicti in criminal case No. 3011 of this Court, entitled 'The People of the Philippines vs. Dionisio Macaranas, et al.' After hearing the arguments of the parties, it is clear that the prosecution in said case claims that the jeep, the subject of herein search warrant, is the same jeep which was alleged to have been stolen from the Division of Investigation, and that the identification, numbers thereof have been tampered with. It is obvious that to order, at this time, the return of the jeep, may nullify the efforts of the People to procure conviction in criminal case No. 3011, for the reason that the jeep in question constitutes, the corpus delicti of the crime charged, according to its theory.

"Premises considered, the motion for reconsideration is hereby denied."

Hence this petition attacking the validity of the warrant. The points involved have been fully argued.

Whether or not the jeep now in the custody of the NBI—holding the property for the court—is the same jeep stolen from Agent 45, or is another vehicle purchased by the herein petitioner from the Government Procurement Commission is obviously a question of fact that should be ventilated neither in this forum nor in this litigation. That issue properly belongs to the courts of first instance.

Petitioner's grievance seems to be planted mainly on the proposition that after Judge Rodas had determined that the jeep was not the stolen jeep, other judges may not thereafter declare that it was.

On this phase of the controversy, it should be noted that, in issuing or not issuing search warrants, judges act in accordance with the evidence presented to them. The proofs submitted to Judge Rodas were not probably as strong as the evidence introduced before Judge Dinglasan. And then it should be remembered that the motions were filed in different cases. Anyway orders of judges on the matter are not final and do not constitute res judicata.

"The denial of a search warrant on the ground, of the insufficiency of the affidavit and deposition is not a bar to further proceedings, nor is the issuance of the warrant and its subsequent discharge res judicata as to the right to the warrant." (56 C. J., 1228.)

"Where accused in a criminal proceeding has petitioned for the return of goods seized, the order of restoration by an inferior court is interlocutory and hence not appealable; likewise a denial, by the United States district court, of defendant's petition for the return of articles seized under a warrant, is such an interlocutory order." (56 C. J., 1253.)

We may, now advert briefly to the other contention of petitioner that the warrant had not been issued by Judge Dinglasan in accordance with the rules. It should be observed that the warrant may be issued to "bring before the court" "property stolen" (Rule 122, sections 1 and 2), and that Judge Dinglasan issued it after considering testimony of agents of the NBI which seems to be justified by the subsequent presentation of information for theft of that jeep. According to the order, the judge was satisfied "after examining under oath" two agents of the Division of Investigation that the jeep was "stolen" property. Therefore, under the circumstances, we do not see any material violation of the principles laid down by this Court in the Garcia[1] and Alvarez[2] cases invoked by petitioner to support his contention.

In fine, this request for restoration is not clearly meritorious; and we should hesitate to favorably act on the petition, there being an indication that petitioner is under a cloud in connection with the larceny of the motor vehicle which he seeks to retrieve from the hands of the law. Petition denied, with costs.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Garcia vs. Judge of First Instance of Tarlac, 36 Off. Gaz., 3275.

[2] Alvarez vs. Court of First Instance of Tayabas, 64 Phil., 33.

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