

**ASIAN SURETY & INSURANCE COMPANY, INC., PETITIONER, VS.
HON. JOSE HERRERA, AS JUDGE, CITY COURT OF MANILA, NBI
AGENT CELSO J. ZOLETA, JR., AND MANUEL CUARESMA,
RESPONDENTS.**

G.R. No. L-25232. December 20, 1973

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition to quash and annul a search warrant issued by respondent Judge Jose Herrera of the City Court of Manila, and to command respondents to return immediately the documents, papers, receipts and records alleged to have been illegally seized thereunder by agents of the National Bureau of Investigation (NBI) led by respondent Celso Zoleta, Jr.

On October 27, 1965, respondent Judge Herrera, upon the sworn application of NBI agent Celso Zoleta, Jr. supported by the deposition of his witness, Manuel Cuaresma, issued a search warrant in connection with an undocketed criminal case for estafa, falsification, insurance fraud, and tax evasion, against the Asian Surety and Insurance Co., a corporation duly organized and existing under the laws of the Philippines, with principal office at Room 200 Republic Supermarket Bldg., Rizal Avenue, Manila. The search warrant is couched in the following language:

"It appearing to the satisfaction of the undersigned, after examining under oath NBI Agent Celso J. Zoleta, Jr. and his witness Manuel Cuaresma that there are good and sufficient reasons to believe that Mr. William Li Yao or his employees has/have in his/their control in pre-mises No. 2nd Floor Republic Super-market Building, in Rizal Avenue district of Sta. Cruz, Manila, property (Subject of the offense; stolen or embezzled and proceeds or fruits of the offense used or intended to be used as the means of committing the offense) should be seized and brought to the undersigned.

"You are hereby commanded to make an immediate search at any time in the ____ of the premises above-described and forthwith seize and take possession of the following personal property to wit: Fire Registers, Loss Bordereau, Adjusters Report including subrogation receipt and proof of loss, Loss Registers, Books of Accounts, including cash receipts and disbursements and general ledger, check vouchers, income tax returns, and other papers connected therewith x x x for the years 1961 to 1964 to be dealt with as the law directs."

Armed with the search warrant Zoleta and other agents assigned to the Anti-Graft Division of the NBI entered the premises of the Republic Supermarket Building and served the search warrant upon Atty. Alidio of the insurance company, in the presence of Mr. William Li Yao, president and chair-man of the board of directors of the insurance firm. After the search they seized and carried away two (2) carloads of documents, papers and receipts.

Petitioner assails the validity of the search warrant, claiming that it was issued in contravention of the explicit provisions of the Constitution and the Rules of Court, particularly Section 1, of Art. III of the 1935 Constitution,

now Section 3, of Art. IV of the new Constitution, and Sections 3, 5, 8 and 10 of Rule 126 of the Rules of Court, here-under quoted for convenience of reference, viz:

"Sec. 3- The rights of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause to be determined 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." (Art. IV, Section 3, New Constitution)

"Sec. 3- Requisites for issuing search warrant - A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the judge or justice of the peace 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.

No search warrant shall issue for more than one specific offense." (Sec. 3, Rule 126, Rules of Court)

"Sec. 5 Issuance and form of search warrant - If the judge or justice of the peace is thereupon satisfied of the existence of facts upon which the application is based, or that there is probable cause to believe that they exist, he must issue the warrant in the form prescribed by these rules." Sec. 5, Rule 126)

"Sec. 8 Time of making search - The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the night or day." (Sec. 8, Rule 126)

"Sec. 10. Receipt for property seized. - The officer seizing property under the warrant must give a detailed receipt for the same to the person on whom or in whose possession it was found, or in the absence of any person, must, in the presence of at least one witness, leave a receipt in the place in which he found the seized property." (Sec. 10, Rule 126)

"Of all the rights of a citizen, few are of greater 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 the inspection and scrutiny of others.[1] 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 citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government (People v. Elias, 147 N.E. 472)."

I.

In the case at bar, the search warrant was issued for four separate and distinct offenses of: (1) estafa, (2) falsification, (3) tax evasion and (4) insurance fraud in contravention of the explicit command of Section 3, Rule 126, of the Rules providing that: "no search warrant shall issue for more than one specific offense." The aforementioned provision, which is found in the last paragraph of the same section, is something new. "There is no precedent on this amendment - prohibition against the issuance of a search warrant for more than one specific offense - either in the American books on Criminal Procedure or in American decisions." [2] It was applied in the celebrated case of *Harry S. Stonehill v. Secretary of Justice* [3] where this Court said:

"To uphold the validity of the warrants in question would be to wipe out completely one of the most fundamental rights guaranteed in our Constitution, for it would place the sanctity of the domicile and the privacy of communication and correspondence at the mercy of the whims, caprice or passion of peace officers. This is precisely the evil sought to be remedied by the constitutional provision abovequoted - to outlaw the so-called general warrants. It is not difficult to imagine what would happen in times of keen political strife, when the party in power feels that the minority is likely to wrest it, even though by legal means.

"Such is the seriousness of the irregularities committed in connection with the disputed search warrants, that

this Court deemed it fit to amend section 3 of Rule 122 of the former Rules of Court by providing in its counterpart, under the Revised Rules of Court, that a 'search warrant shall not issue but upon probable cause in connection with one specific offense'. Not satisfied with this qualification, the court added thereto a paragraph, directing that 'no search warrant shall issue for more than one specific offense.'

II.

Petitioner likewise contests the validity of the search warrant on the ground that it authorized the search and seizure of personal properties so vaguely described and not particularized, thereby infringing the constitutional mandate requiring particular description of the place to be searched and the persons or things to be seized. It also assails the non-compliance with the above-requirement as likewise openly violative of Section 2 of Rule 126 which provides:

"SEC. 2. A search warrant may be issued for the search and seizure of the following personal property:

- (a) Property subject of the offense;
- (b) Property stolen or embezzled and other proceeds or fruits of the offense; and
- (c) Property used or intended to be used as the means of committing an offense."

The search warrant herein involved reads in part: "x x x property (Subject of the offense, stolen or embezzled and proceeds or fruits of the offense used or intended to be used as the means of committing the offense) should be seized and brought to the undersigned." The claim of respondents that by not cancelling the description of one or two of the classes of property contained in the form when not applicable to the properties sought to be seized, the respondent judge intended the search to apply to all the three classes of property. This is a patent impossibility because the description of the property to be searched and seized, viz: Fire Registers, Loss Bordereau, Adjusters Report, including subrogation receipts and proof of loss, Loss Registers, Books of Accounts including cash receipts and disbursements and general ledger, etc. and the offenses alleged to have been committed by the corporation to wit: estafa, falsification, tax evasion and insurance fraud, render it impossible for Us to see how the above-described property can simultaneously be contraband goods, stolen or embezzled and other proceeds or fruits of one and the same offense. What is plain and clear is the fact that the respondent Judge made no attempt to determine whether the property he authorized to be searched and seized pertains specifically to any one of the three classes of personal property that may be searched and seized under a search warrant under Rule 126, Sec. 2 of the Rules. The respondent Judge simply authorized search and seizure under an omnibus description of the personal properties to be seized. Because of this all embracing description which includes all conceivable records of petitioner corporation, which if seized (as it was really seized in the case at bar), could possibly paralyze its business,[4] petitioner in several motions filed for early resolution of this case, manifested that the seizure of TWO carloads of their papers has paralyzed their business to the grave prejudice of not only the company, its workers, agents, employees but also of its numerous insured and beneficiaries of bonds issued by it, including the government itself, and of the general public.[5] And correlating the same to the charges for which the warrant was issued, We have before Us the infamous general warrants of old. In the case of Uy Kheyting et al., v. Villareal, 42 Phil. 896, cited with approval in the Bache case, supra, We had occasion to explain the purpose of the requirement that the warrant should particularly describe the place to be searched and the things to be seized, to wit:

"x x x Both the Jones Law (sec. 3) and General Orders No. 58 (sec. 97) specifically require that a search warrant should particularly describe the place to be searched and the things to be seized. The evident purpose and intent of this requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant - to leave the officers of the law with no discretion regarding what articles they shall seize, to the end that 'unreasonable searches and seizures' may not be made. That this is the correct

interpretation of this constitutional provision is borne out by American authorities."

The purpose as thus explained could, surely and effectively, be defeated under the search warrant issued in this case.

III.

Moreover, as contended by petitioner, respondents in like manner transgressed Section 10 of Rule 126 of the Rules for failure to give a detailed receipt of the things seized. Going over the receipts (Annexes "B", "B-1", "B-2", "B-3" and "B-4" of the Petition) issued, We found the following: one bordereau of reinsurance, 8 fire registers, 1 marine register, four annual statements, folders described only as Bundle gm-1 red folders; bundle 17-22 big carton folders; folders of various sizes, etc., without stating therein the nature and kind of documents contained in the folders of which there were about a thousand of them that were seized. In the seizure of two carloads of documents and other papers, the possibility that the respondents took away private papers of the petitioner, in violation of his constitutional rights, is not remote, for the NBI agents virtually had a field day with the broad and unlimited search warrant issued by respondent Judge as their passport.

IV.

The search warrant violated the specific injunctions of Section 8 of Rule 126.[6] Annex "A" of the Petition which is the search warrant in question left blank the "time" for making search, while actual search was conducted in the evening of October 27, 1965, at 7:30 p.m., until the wee hours of the morning of October 28, 1965, thus causing untold inconveniences to petitioners herein. Authorities[7] are of the view that where a search is to be made during the night time, the authority for executing the same at that time should appear in the directive on the face of the warrant.

In their Memorandum[8] respondents, relying on the case of *Moncado v. Peoples Court* (80 Phil. 1), argued:

"Even assuming that the search warrant in question is null and void, the illegality thereof would not render the incriminating documents inadmissible in evidence."

This Court has reverted to the old rule and abandoned the *Moncado* ruling (*Stonehill* case, *supra*). Most common law jurisdictions have already given up this approach and eventually adopted the exclusionary rule, realizing that this is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. Thus the Supreme Court of the United States declared:[9]

"If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secured against such searches and seizures is of no value, and so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land."

Moreover, the criminal charges filed by the NBI have all been dismissed and/or dropped by the Court or by the office of the City Fiscal of Manila in 1968, as manifested in the petition filed by petitioner dated October 24, 1972, for early resolution of this case.

V.

It has likewise been observed that the offenses alleged took place from 1961 to 1964, and the application for search warrant was made on October 27, 1965. The time of the application is so far remote in time as to make the probable cause of doubtful veracity and the warrant vitally defective. Thus Mr. Joseph Varon, an eminent authority on Searches, Seizures and Immunities, has this to say on this point:

"From the examination of the several cases touching upon this subject, the following general rules are said to apply to affidavits for search warrants:

(1) x x x

(2)

Such statement as to the time of the alleged offense must be clear and definite and must not be too remote from the time of the making of the affidavit and issuance of the search warrant.

(3)

There is no rigid rule for determining whether the stated time of observation of the offense is too remote from the time when the affidavit is made or the search warrant issued, but, generally speaking, a lapse of time of less than three weeks will be held not to invalidate the search warrant, while a lapse of four weeks will be held to be so.

A good and practical rule of thumb to measure the nearness of time given in the affidavit as to the date of the alleged offense, and the time of making the affidavit is thus expressed: The nearer the time at which the observation of the offense is alleged to have been made, the more reasonable the conclusion of establishment of probable cause." [Italics Ours]

PREMISES CONSIDERED, petition is hereby granted; the search warrant of October 27, 1965, is nullified and set aside, and the respondents are hereby ordered to return immediately all documents, papers and other objects seized or taken there-under. Without costs.

Makalintal, C.J., Ruiz Castro, Fernandez[*], and Muñoz Palma, JJ., concur.
Makasiar, J., concurs in the result.

[1] In re Pacific Railway Commission, 32 Fed. 241; Interstate Commerce Comm. v. Brimson, 38 Law. ed., 1047; Boyd v. U.S. 29 Law. ed. 746; Carrol v. U. S., 69 Law. ed., 543, 549.

[2] Francisco, The Revised Rules of Court in the Philippines, 1963 ed. p. 890.

[3] Harry S. Stonehill v. Sec. of Justice, L-19550, June 19, 1967, 20 SCRA, 392.

[4] Bache & Co., (Phil.) Inc. v. Ruiz, L-32409, February 27, 1971, 37 SCRA 835.

[5] See Rollo p. 94, 182.

[6] "Sec. 8. The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night."

[7] People v. de Jesus, 73 PRR (1952); People v. Negron, 72 PRR 825; State v. Conwell, 96 Me 172, 51 A 873 as cited in Varon's Searches, Seizures and Immunities, 1961 p. 394.

[8] See p. 144 of Rollo.

[9] Weeks v. U. S. 232 U.S. 383, 58 L. ed. 652, 34 S Ct. 341, cited in Stonehill case, supra, p. 394.

[*] In lieu of Justice Teehankee, disqualified.

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