

OSCAR VILLANUEVA, PETITIONER, VS. HON. JUDGE JOSE R. QUERUBIN, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-26177. December 27, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

In accordance with the policy to which this Court is committed, namely, that a colorable claim of a denial of a constitutional right should not be ignored, petitioner, in this certiorari and prohibition proceeding, succeeded in having his alleged grievance against respondent Judge, the Honorable Jose R. Querubin, now retired, heard. He would have us nullify the lower court order of June 1, 1966 requiring him "to return and deliver to the Provincial Commander, Bacolod City, the amount of P10,350.00 and the wooden container stated in the receipt issued by the accused dated April 1, 1966, within forty-eight (48) hours upon receipt of this order." [1] The money in question formed part of the things seized in accordance with a search warrant previously issued by respondent Judge himself. Petitioner therefore, to lend plausibility to his plea, was under the necessity of alleging that less than full respect was accorded his constitutional right to be free from unreasonable search and seizure. [2] He would impress on us that full fealty was not shown to what is ordained by such a guarantee. Assertion of such a disregard of a constitutional command is one thing; proof is another. What is more, there is included in the petition itself [3] a written promise of petitioner to return such amount when required. Accordingly, as will be explained, petitioner did fail to show that he is entitled to the writs of certiorari and prohibition prayed for.

It was alleged in the petition that on April 23, 1966, in a motion filed with respondent Judge by an assistant city fiscal of Bacolod City and a special prosecutor of the Department of Justice, it was set forth that on March 16, 1966, the residence of petitioner was raided by a constabulary and police team on the strength of a search warrant issued by such respondent Judge, in the course of which, there was a seizure of the amount of P10,350.00, which was not however deposited in court, as thereafter its possession was restored to petitioner. It was further stated that an information for the violation of Article 195 of the Revised Penal Code was filed with the City Court of Bacolod against petitioner. [4] There was an opposition on the part of petitioner to such motion wherein after asserting that the lower court was without jurisdiction and that the matter had become moot and academic, because the money was spent in good faith by him for the payment of the wages of his laborers, it was contended that there was a violation of his constitutional rights not to be deprived of property without due process of law and to be free from unreasonable searches and seizures. [5] Subsequently, after a reply to such opposition and a rejoinder were submitted, the respondent Judge issued the challenged order dated June 1, 1966, the dispositive portion of which reads: "[In view thereof], the accused Oscar Villanueva is hereby ordered to return and deliver to the Provincial Commander, Bacolod City, the amount of P10,350.00 and the wooden container stated in the receipt issued by the accused dated April 1, 1966, within forty-eight (48) hours upon receipt of this order." [6]

There was a motion for reconsideration, but it was denied on June 11, 1966. [7] Hence this petition. In view of the

stress laid therein as to the failure of respondent Judge considering the circumstances of the case to yield deference to the command of the right against unreasonable searches and seizure, and the assertion that unless there is a writ of preliminary injunction issued, respondent Judge will cause the enforcement of The challenged order, thus exposing him to contempt proceedings and other disciplinary actions if he could not comply with it, this Court adopted a resolution on June 21, 1966 which reads as follows: "The respondents in L-26177 (Oscar Villanueva vs. Hon. Judge Jose R. Querubin, etc., et al.) are required to file, within 10 days from notice hereof, an answer (not a motion to dismiss) to the petition for prohibition and certiorari; upon petitioner's posting a bond of two thousand pesos (P2,000.00), let preliminary injunction issue." [8]

In the answer filed by the then Solicitor General Antonio P. Barredo, now a member of this Court, the question of the alleged violation of the constitutional guarantee against unreasonable search and seizure was squarely met, thus: "Neither will the assailed orders result in unreasonable search and seizure for as already said earlier the money and wooden box in question were confiscated during a gambling raid pursuant to a search warrant issued by the respondent court after due and appropriate proceedings during which the petitioner and his witnesses were examined under oath by the respondent court." [9] The point thus raised was sought to be refuted in petitioner's written memo-randum, but in a manner far from persuasive. For he did raise the specious argument that after the service of the search warrant on March 16, 1966, the motion of April 23, 1966 for the return of the money came too late, ignoring that the Rules of Court does require that the things seized be deposited in court. [10] Moreover, to counter the damaging effect of a written promise, which commendably he did not omit from his petition, that the amount of P10,350.00 "will be returned * * * if the higher authorities will require the return of the same by legal orders, * * *," [11] he would rely on his alleged rights as owner. Thus: "While he agreed to return the money by 'legal orders', this cannot be considered as a limitation on his right of ownership, because when an agreement conflicts with the provision of law, the latter must prevail. (Article 1306, Civil Code)." [12] There was no adequate appreciation of the controlling norms as to the effects of a seizure under a valid search warrant or one not so challenged. It is on the basis of such contentions that petitioner would have us issue the writs of certiorari and prohibition.

A perusal of the pleadings yields the conclusion that petitioner failed to meet the burden of demonstrating that there was a denial of a constitutional right sufficient to oust the court of jurisdiction. On the contrary, what appears undeniable is that the actuation of respondent Judge was in accordance with law. There can be no question then of a violation of the safeguard against unreasonable search and seizure.

1. This constitutional right refers to the immunity of one's person, whether citizen or alien, from interference by government, included in which is his residence, his papers, and other possessions. Since, moreover, it is invariably through a search and seizure that such an invasion of one's physical freedom manifests itself, it is made clear that he is not to be thus molested, unless its reasonableness could be shown. To be impressed with such a quality, it must be accomplished through a warrant, which should not be issued unless probable cause is shown, to be determined by a judge after examination under oath or affirmation of the complainant and the witnesses he may produce, with a particular description of the place to be searched, and the persons or things to be seized.

It is deference to one's personality that lies at the core of this right, but it could be also looked upon as a recognition of a constitutionally protected area, primarily one's home, but not necessarily thereto confined. [13] What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. There the state, however powerful, does not as such have access except under the circumstances above noted, for in the traditional, formulation, his house, however humble, is his castle. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any invasion of

his dwelling and to respect the privacies of his life.[14] In the same vein, Landynski in his authoritative work[15] could fitly characterize this constitutional right as the embodiment of "a spiritual concept: the belief that to value the privacy of home and person and to afford it constitutional protection against the long reach of government is no less than to value human dignity, and that this privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguards." [16]

2. Necessarily, then, if petitioner's alleged grievance, consisting of a disregard of the guarantee against unreasonable search and seizure, were substantiated, he could validly raise a constitutional question of sufficient gravity to entitle him to the remedies sought. For a failure to respect a constitutional command resulting in a deprivation of a constitutional right is visited by loss of jurisdiction.[17] Such is not the case, however. He did not even put in issue the validity of the search warrant, as a result of which there was a seizure of the money in question. For what were the facts on which the challenged order was based, facts binding on this Court? As set forth therein: "As a result of the raid conducted by a party of the Philippine Constabulary led by Lt. Alexander Aguirre at 4:00 o'clock in the afternoon of March 16, 1966, in virtue of a search warrant issued by the undersigned on March 14, 1966, the raiding party was able to arrest eight (8) participants in the game of 'Monte' held in one of the rooms of the house of Oscar Villanueva at 6th Street, Bacolod City. Among the gambling paraphernalias seized during the raid is cash in the amount of P10,570.00, which the raiding party submitted to this Court in endorsing the search warrant, thus subjecting the gambling paraphernalia seized by the raiding party under the control of this Court. On March 24, 1966 the City Fiscal of Bacolod City filed an information for Violation of Art. 195 of the Revised Penal Code against the eight (8) apprehended persons named in the endorsement of the Philippine Constabulary. All the accused pleaded guilty and [were] convicted by the City Court. Upon recommendation of the Fiscal, however, only the amount of P220.00 was ordered forfeited in favor of the government and the amount of P10,350.00 was ordered to be returned to Oscar Villanueva, the owner of the house, who issued the receipt for the amount with the condition that he will return the money if the higher authorities will require the return of the said amount." [18] Then respondent Judge, after referring to *Philips vs. Municipal Mayor*, [19] stated further in the order now under scrutiny: "In the light of the aforequoted ruling of the appellate court, it is clear that the Court of First Instance that issued the search warrant has jurisdiction over the amount of P10,350.00 and its wooden container. With regards to the contention of the counsel for the accused that the return of the amount of P10,350.00 is a moot question because the said amount is already spent by the accused, whatever defenses the accused may invoke to resist the return of the amount of money in question is futile and untenable by estoppel. The accused in issuing the corresponding receipt of the amount of P10,350.00 and the wooden box container, agreed to return the said amount and the box if the higher authorities may so require. The return of the amount of P10,350.00 and the wooden box container is imperative because the money in the box is a part and parcel of the gambling paraphernalia seized by the raiding party of the Philippine Constabulary in the house of the accused Oscar Villanueva who is at present facing the charge for violation of the gambling law." [20]

Even if the recital of the antecedents of the challenged order were less compelling in thus lending support to what was done by respondent Judge, still petitioner had failed to make out a case. For, had he entertained doubts as to the validity of the issuance of the search warrant or the manner in which it was executed, he was called upon to establish such a claim in court. He could rely on authoritative doctrines of this Court precisely to seek a judicial declaration of any illegal taint that he could, with plausibility, assert. [21] That he failed to do. The Rules of Court made clear what is to be done after the seizure of the property. Thus: "The officer must forthwith deliver the property to the municipal judge or judge of the city court or of the Court of First Instance which issued the warrant, together with a true inventory thereof duly verified by oath." [22] The legal custody was therefore appropriately with respondent Judge, who did authorize the issuance of such search warrant. Even if the money

could validly be returned to petitioner, had it happened that in the meanwhile some other officer of the law had it in his possession, still, under the ruling of this Court in *Molo vs. Yatco*,^[23] there should be a motion for its restoration to petitioner that must be affirmatively acted upon by respondent Judge. Thus: "It appears from the present case that the documents and other papers belonging to the petitioner Mariano Molo, which were seized by a special agent of the Anti-Usury Board by virtue of a warrant issued by the Court of First Instance of Rizal, came into the possession of said board, and while it does not appear how said board came to have them in its possession, it is presumed that it was by virtue of an authority given by said court (sec. 334, No. 31, Act No. 190). By virtue of said authority the board became an agent of the Court of First Instance of Rizal in the custody of the documents in question, with the obligation to return them to said court upon the termination of the investigation for which the board needed them. As the Anti-Usury Board had found no sufficient evidence to warrant a criminal action against the petitioner for violation of the Usury Law, and as said board had dismissed the case under investigation, it was duty bound to return said documents and papers to the Court of First Instance of Rizal so that the latter might order the return thereof to their owner."^[24]

Much less could the seizure, the validity of the search warrant being admitted, be open to question. As was set forth by Justice Malcolm in *People vs. Veloso*: "The police officers were accordingly authorized to break down the door and enter the premises of the building occupied by the so-called Parliamentary Club. When inside, they then had the right to arrest the persons presumably engaged in a prohibited game, and to confiscate the evidence of the commission of the crime. It has been held that an officer making an attest may take from the person arrested any money or property found upon his person, which was used in the commission of the crime or was the fruit of the crime, or which may furnish the person arrested with the means of committing violence or of escaping, or which may be used as evidence on the trial of the cause, but not otherwise."^[25]

3. There is an equally insurmountable obstacle to the grant of petitioner's prayer for the writs of certiorari and prohibition. There is included, as one of the annexes to his petition, the following: "Received from Assistant City Fiscal Jesus V. Ramos the sum of [Ten Thousand Three Hundred Fifty] (P10,350.00) Philippine Currency. This money will be returned to him if the higher authorities will require the return of the same by legal orders, otherwise the same will not be returned."^[26] It was executed on April 1, 1966 and duly signed by him. As previously noted, he would dispute the legality of the order requiring the return to enable him to avoid the effects of such a promise. Not only would he thus ignore his plighted word, but what is worse, he would impress on this Court a rather unorthodox notion of what legality connotes. His contention as to the failure of the challenged order to meet such a test is that he is the owner of such an amount. What he would conveniently ignore was the seizure thereof under a valid search warrant. The very constitutional guarantee relied upon does not preclude a search in one's home and the seizure of one's papers and effects as long as the element of reasonableness is not lacking. It cannot be correctly maintained then that just because the money seized did belong to petitioner, its return to the court that issued the search warrant could be avoided when precisely what the law requires is that it be deposited therein. As a matter of fact, what lacks the element of legality is the continued possession by petitioner. Resort to a higher tribunal then to nullify what was done by respondent Judge is futile and unavailing.

WHEREFORE , the petition for prohibition and certiorari is dismissed and the writ of preliminary injunction under the resolution of this Court of June 21, 1966, lifted and set aside. With costs against petitioner.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Makasiar, Antonio, and Esguerra, JJ., concur.

Teehankee and Barredo, JJ., took no part.

[1] Petition, par. 5.

[2] According to Art. III, Sec. I, par. 3 of the Constitution: "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 warrants 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."

[3] Petition, Annex A-1.

[4] Petition, par. 2.

[5] Ibid, par. 3.

[6] Ibid, pars. 4-5.

[7] Ibid, par. 8.

[8] Resolution, June 21, 1966.

[9] Answer, par. 26(j).

[10] Cf. Sec. II of Rule 126 reads: "The officer must forthwith deliver the property to the municipal judge or judge of the city court or of the Court of First Instance which issued the warrant, together with a true inventory thereof duly verified by oath.

[11] Petition, Annex A-1.

[12] Petitioner's Written Memorandum in Lieu of Oral Argument, 13-14.

[13] Cf. *Hoffa vs. United States*, 385 US 293 (1966).

[14] Cf. *Schmerber vs. California*, 384 US 757 (1966), *Brennan J.* and *Boyd vs. United States*, 116 US 616, 630(1886).

[15] *Search and Seizure and the Supreme Court* (1966).

[16] Ibid, p. 47.

[17] Cf. *Conde vs. Rivera*, 45 Phil. 650 (1924); *Harden vs. Director of Prisons*, 81 Phil. 741 (1948); *Abriol vs. Homeres*, 84 Phil. 525 (1949); *Chavez vs. Court of Appeals*, L-29169, Aug. 19, 1968, 24 SCRA 663; *Celeste vs. People*, L-31435, Jan. 30, 1970, 31 SCRA 391; *Gumabon vs. Director of Prisons*, L-30026, Jan. 30, 1971, 37 SCRA 420.

[18] Petition, Annex F.

[19] 105 Phil. 1344(1959). Cf. *Villaruz vs. Court of First Instance*, 71 Phil 72 (1940).

[20] Petition, Annex F, 2-3.

[21] Cf. *Uy Kheytn vs. Villareal*, 42 Phil. 886 (1920); *People vs. Carlos*, 47 Phil. 626 (1925); *People vs. Veloso*, 48 Phil. 169 (1925); *People vs. Rubio*, 57 Phil. 384 (1932); *Molo vs. Yatco*, 63 Phil. 644 (1936); *Alvarez vs. Court of First Instance of Tayabas*, 64 Phil. 33 (1937); *People vs. Sy Juco*, 64 Phil. 667 (1937); *Rodriguez vs. Villamiel*, 65 Phil. 230 (1937); *Pasion Vda. de Garcia vs. Locsin*, 65 Phil. 689 (1938); *Yee Sue Koy vs. Almeda*, 70 Phil. 141 (1940); *Alvero vs. Dizon*, 76 Phil. 637 (1946); *Magoncia vs. Palacio*, 80 Phil. 770 (1948); *Cruz vs. Dinglasan*, 83 Phil. 333 (1949); *Stonchill vs. Diokno*, L-19550, June 19, 1967, 20 SCRA 383; *Central Bank vs. Morfe*, L-20119, June 30, 1967, 20 SCRA 507; *Pagkalinawan vs. Gomez*, L-22585, Dec. 18, 1967, 21 SCRA

1275; Bache & Co. (Phil.) vs. Ruiz, L-32409, Feb. 27, 1971, 37 SCRA 823.

[22] Section II, Rule 126 of the Rules of Court. It used to be Sec. II of former Rule 122. Before that, it was Sec. 104 of General Order No. 58.

[23] 63 Phil. 644 (1936).

[24] Ibid, 648.

[25] 48 Phil. 169, 180-181 (1925). In support of such a ruling, a 1909 decision, *Moreno vs. Ago Chi*, 12 Phil. 439, was cited.

[26] Petition, Annex A-1.

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