

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE ESTHER NOBLES BANS, REGIONAL TRIAL COURT, BRANCH 72, OLONGAPO CITY, VICENTE MAGSAYSAY AND GIL MAGSAYSAY, RESPONDENTS.

G.R. No. 104147. December 08, 1994

Ponente: BIDIN, J.

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BIDIN, J.:

This special civil action for certiorari seeks to annul the order of respondent Judge Esther Bans of the Regional Trial Court of Olongapo City, Branch 72, dated September 18, 1991, granting the Demurrer to Evidence filed by private respondents and acquitting them of the crime of Illegal Possession of Firearms and the order of the same court dated November 29, 1991, denying reconsideration thereof.

Acting upon an information that private respondent Vicente Magsaysay was keeping assorted unlicensed firearms and ammunitions including radio equipment in his residence at Barangay Magsaysay, Castillejos, Zambales, as well as the reported presence in the same residence of some rebel officers namely Lt. Cols. Rodolfo Tor and Neon Ebuena, the Armed Forces of the Philippines (AFP), through Capt. Jose Feliciano Loy of the Judge Advocate General's Staff (JAGS), applied for a search warrant with Hon. Judge Nicias Mendoza of the Regional Trial Court of Olongapo City, Branch 74.

Finding the existence of probable cause, Judge Mendoza issued a search warrant and on the same day, combined elements of the AFP and the Metropolitan District Command (Metrodiscom) conducted a search of the Magsaysay residence in the presence of private respondent Gil Magsaysay, Barangay Captain Godofredo Villanueva and other barangay officials. The search yielded the following unlicensed firearms: Pistol Ithaca Cal. 45 SN 922837; Pistol Czechoslovakia Cal. 9 mm. SN 16539; Rifle Cal. 22 SN SM--16550; Rifle SN Cal. 22 SN 817146 and Rifle Model 88 SN 8331.

On September 28, 1990, an information against herein private respondents, brothers Vicente and Gil Magsaysay, for violation of Presidential Decree No. 1866 (Illegal Possession of Firearms and Ammunitions) was filed.

Upon arraignment, private respondents pleaded not guilty. Trial ensued. After the prosecution rested its case, private respondents filed a Demurrer to Evidence alleging failure on the part of the prosecution to prove their guilt beyond reasonable doubt, on the ground that since the search warrant and the order to break open six vaults were illegally issued, the firearm and ammunitions seized in compliance therewith are inadmissible in evidence. Despite opposition on the part of the prosecution, respondent judge granted the Demurrer to Evidence in an order dated September 18, 1991, the dispositive portion of which states:

"IN VIEW OF ALL THE FOREGOING, the Demurrer to Evidence is granted and both accused are ACQUITTED of the offense charged in the information, with costs de oficio.

"Maj. Victorio Tabanquil and Capt. Jose Feliciano Loy are ordered to deliver to the court all the articles seized by them at the Magsaysay compound covered by receipts (Exhibits 'C' to 'C-9' and 'E' to 'E-9'), which are not

yet in the custody of the court, for its disposition in accordance with law. The licensed firearm, to be immediately returned to the licensee/es; those covered by the amnesty to be validated or licensed/applied for permits to carry; and the rest, particularly the ammunitions, to be confiscated in favor of the government.

"SO ORDERED" (Rollo, pp. 23-24).

The prosecution filed a Motion for Reconsideration but the same was denied by respondent judge on the ground that any reconsideration of the aforesaid order will place private respondents in double jeopardy; the order granting the demurrer having resulted in the acquittal of private respondents.

It appears, however, that before private respondents demurred to the evidence, they moved to quash the search warrant before the issuing court, RTC Branch 74. In an order dated October 22, 1990, said court upheld the validity of the search warrant, the last paragraph of which is quoted hereunder:

"It appearing therefore to the Court, that it was never misled by the deponent-witness, and that the issuance of the questioned search warrant was made after the Court minutely and substantially complied with the legal and constitutional requirements for the issuance of the search warrant, and it appearing further, that the search warrant had already been implemented at the time when the motion to quash was filed, and finding that the implementation of the search warrant by the police officers was done in accordance with law, the Court is constrained to DENY as it hereby DENIES the motion of the respondent to quash the search warrant.

"SO ORDERED" (Rollo, p. 42).

Hence, the present petition for certiorari under Rule 65 of the Rules of Court with prayer for the issuance of writ of preliminary injunction or temporary restraining order. In this petition, petitioner assails the decision of respondent judge on the following grounds:

"Respondent judge acted in excess of jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction in:

"a) Invalidating the search warrant and related Order of Judge Nicias Mendoza of Branch 74 of the Regional Trial Court of Olongapo City, a co-equal and coordinate trial court;

"b) Denying petitioner's Motion for Reconsideration of the Order of September 18, 1991 on the patently erroneous ground of double jeopardy; and

"c) Hastily acquitting private respondents, despite petitioner's evidence which ably established not only a prima facie case against the former but their guilt beyond reasonable doubt." (Rollo, p. 7)

On March 19, 1992, the Court issued a temporary restraining order as prayed for and ordered respondent judge to cease and desist from acting on the "Motion to Order Release of Confiscated Items" filed by private respondents with respondent court.

Certiorari will not lie.

Generally, an order of a court of competent jurisdiction may not be modified or altered by any court of concurrent jurisdiction. Given the facts of this case, however, this rule cannot be applied.

There could have been no problem had the court which issued the search warrant was likewise the same court before which the criminal case is pending as a result of its issuance. But if the criminal case which was subsequently filed by virtue of the search warrant is raffled off to a different branch, all incidents relating to the validity of the warrant issued should be consolidated with that branch trying the criminal case (See *Nolasco v. Paño*, 139 SCRA 152 [1985]). The rationale is to avoid confusion as regards the issue of jurisdiction over the case and to promote an orderly administration of justice. As observed by this Court in *Nolasco*:

"Parenthetically, it strikes the Court that the pendency of the SEARCH WARRANT CASE and of the SUBVERSIVE DOCUMENTS CASE before two different Courts is not conducive to an orderly administration of justice. It should be advisable that, whenever a search warrant has been issued by one Court, or Branch, and a criminal prosecution is initiated in another Court, or Branch, as a result of the service of the search warrant, the SEARCH WARRANT CASE should be consolidated with the criminal case for orderly procedure. The later criminal case is more substantial than the Search Warrant proceeding, and the Presiding Judge in the criminal case should have the right to act on petitions to exclude evidence unlawfully obtained."

The wisdom of this doctrine presents itself in the instant case.

Under the aforestated facts, two branches of the same RTC took cognizance over two (2) separate incidents of the case. On June 6, 1990, Judge Mendoza of Branch 74 issued a search warrant which led to the filing of the criminal case. On the other hand, on September 28, 1991, respondent Judge Bans of Branch 72 of the same RTC heard and eventually decided the said criminal case filed before it.

Procedurally, Judge Mendoza should have referred the Motion to Quash the search warrant to Branch 72 where the criminal case was pending, as prescribed in *Nolasco* for purposes of consolidating the issue on the validity of the search warrant with the criminal case for violation of P.D. 1866. If the rule had been otherwise, i.e., if the issuing court had been allowed to resolve the Motion to Quash the search warrant despite the pendency of a criminal case arising therefrom before another court, it would give rise to the absurd situation where the judge hearing the criminal case will be bound by the declaration of the validity of the search warrant made by the issuing judge, and the former will thereafter be restrained from reviewing such finding in view of the doctrine of non-interference observed between courts of concurrent and coordinate jurisdiction. Such a situation will thus make it difficult, if not impossible, for respondent court to make an independent and objective appreciation of the evidence and merits of the criminal case. For this reason, the court trying the criminal case should be allowed to rule on the validity of the search warrant in order to arrive at a judicious administration of justice.

The prosecution contends that the denial of the Motion to Quash became final and executory when the accused did not interpose an appeal therefrom and hence, respondent judge could no longer disturb the same. It is elementary that a final order is one which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined. On the other hand, an order is interlocutory if it does not dispose of a case completely but leaves something more to be adjudicated upon, as in this case, private respondents' guilt (*Marcelo vs. De Guzman*, 114 SCRA 657 [1982]). Applying the foregoing rule, an order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for certiorari (*Cruz, Jr. vs. Court of Appeals*, 194 SCRA 145 [1991]).

In terms of substantive law, the Court will not pass upon the propriety of the order granting the Demurrer to Evidence on the ground of insufficiency of evidence and the consequent acquittal of the accused, as it will place the latter in double jeopardy. Generally, the dismissal of a criminal case resulting in acquittal made with the express consent of the accused or upon his own motion will not place the accused in double jeopardy. However, this rule admits of two exceptions, namely: insufficiency of evidence and denial of the right to a speedy trial (*People vs. Declaro*, 170 SCRA 142 [1989]; *People vs. Hon. Rodolfo M. Bellaflor*, G.R. No. 103275, June 15, 1994). In the case before us, the resolution of the Demurrer to Evidence was based on the ground of insufficiency of evidence after a finding that the search warrant was illegally issued. Hence, it clearly falls under one of the admitted exceptions to the rule. Double jeopardy therefore, applies to this case and this Court is constitutionally barred from reviewing the order acquitting the accused.

Furthermore, the present petition is a special civil action for certiorari under Rule 65 which calls only for a review of any error arising from the exercise of jurisdiction or lack thereof and not a review of an error of judgment. A

review of the sufficiency of the evidence and of the propriety of the acquittal of the accused lies outside the function of certiorari as it intrudes into the prerogatives of Rule 45, under ordinary appeals, where an alleged error of judgment may be subjected to review. A review of the judgment of acquittal of private respondents under this petition for certiorari (Rule 65) would place the accused in double jeopardy which is not allowed.

The case of *Central Bank vs. Court of Appeals* (171 SCRA 49 [1989]) clearly and lengthily expounded on the functions of the writ of certiorari, viz:

"x x x Whether this conclusion was based merely on speculations and conjecture, or on a misapprehension of facts and contrary to the documents and exhibits of the case, is not for us to determine in a petition for certiorari wherein only issues of jurisdiction may be raised. Neither can we determine whether the constructions given by the appellate court to a document is right or wrong as errors in the appreciation of evidence may not be reviewed by certiorari because they do not involve any jurisdictional question.

"The function of a writ of certiorari is to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction. It is available only for these purposes and not to correct errors of procedure or mistakes in the judge's findings or conclusions. The mere fact that the court decides the question wrong is utterly immaterial to the question of its jurisdiction. Thus, assuming *arguendo*, that the court had committed a mistake, the error does not vitiate the decision considering that it had jurisdiction over the case. The writ of certiorari issues for the certiorari of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of certiorari cannot be legally used for any other purpose. If the court has jurisdiction of the subject matter and of the person, the orders and rulings upon all questions pertaining to the cause are orders and rulings within its jurisdiction and cannot be corrected by certiorari.

"Ordinarily, errors of judgment may be corrected in a timely appeal from the judgment on the merits. Such remedy, however, is not available in the case at bar, the decision involved being one of acquittal. An appeal therefrom by the People would run counter to the accused's constitutional guarantee against double jeopardy.

"We discern in this petition for certiorari a subtle attempt to have us review the judgment of the appellate court on the merits. While the petition at bar is denominated a special civil action for certiorari under Rule 65 of the Rules of Court and the issues raised therein ostensibly dealt with the jurisdiction of the appellate court, petitioner's attack on the appellate court's jurisdiction is premised on the conclusions that (a) the findings of facts of the appellate court were based on conjectures and speculations, or on misapprehension of facts and contrary to the documents and exhibits; (b) the exhibit relied upon by the appellate court has not been offered nor admitted in evidence during the trial; and (c) the appellate court gave to a document a meaning contrary to its contents. But how valid and tenable these premises are remains a question. To determine their validity would entail a review and re-evaluation of the evidence on record as well as the procedure taken vis-a-vis the conclusions arrived at by the appellate court; in effect a review of the judgment of acquittal, which we cannot do in a petition for certiorari and without violating private respondents' constitutional right against double jeopardy.

"Section 2 of Rule 122 of the Rules of Court provides that 'the People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy.' The argument that the judgment is tainted with grave abuse of discretion and therefore, null and void, is flawed because whatever error may have been committed by the lower court was merely an error of judgment and not of jurisdiction. It did not affect the intrinsic validity of the decision. This is the kind of error that can no longer be rectified on appeal by the prosecution no matter how obvious the error may be. The rule therefore, in this jurisdiction is that a judgment of acquittal is not reviewable by a higher court, for an appeal by the government from the judgment would put the accused in second jeopardy for the same offense." (underscoring supplied)

Having determined that respondent court had jurisdiction to issue the assailed orders, this Court upholds the

acquittal of the accused.

WHEREFORE, the Petition is DENIED for lack of merit. The temporary restraining order issued on March 19, 1992 is hereby LIFTED and SET ASIDE.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

Feliciano, J., on leave.

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