

FRANK UY AND UNIFISH PACKING CORPORATION, PETITIONERS, VS. BUREAU OF INTERNAL REVENUE AND HON. MERCEDES GOZO-DADOLE, RESPONDENTS.

G.R. No. 129651. October 20, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Petitioners assail the validity of the warrants issued for the search of the premises of the Unifish Packing Corporation, and pray for the return of the items seized by virtue thereof.

On 30 September 1993, a certain Rodrigo Abos reported to the Bureau of Internal Revenue (BIR) that petitioners Unifish Packing Corporation and Uy Chin Ho alias Frank Uy were engaged in activities constituting violations of the National Internal Revenue Code. Abos, who claimed to be a former employee of Unifish, executed an Affidavit[1] stating:

- He has personal knowledge that UNIFISH PACKING CORPORATION (hereinafter referred to as UNIFISH), a canning factory located at Hernan Cortes Street, under the active management of UY CHIN HO alias Frank Uy [,] is selling by the thousands of [sic] cartons of canned sardines without issuing receipt. This is in violation of Sections 253 and 263 of the Internal Revenue Code.

- This grand scale tax fraud is perpetrated through the following scheme:

- (1) Uy Chin Ho a director of UNIFISH buys in bulk from the company;
- (2) Being a director, Uy Chin Ho has a lot of clout in the distribution of the canned sardines processed by UNIFISH;
- (3) Uy Chin Ho dictates the value of canned sardines that he orders and buys from UNIFISH without any receipt of his purchases;
- (4) The moment he has the quantity he wants, UNIFISH through Uy Chin Ho delivers to the different supermarkets such as White Gold, Gaisano, etc.;
- (5) Payments made by these tax evading establishments are made by checks drawn payable to cash and delivered to Uy Chin Ho; These payments are also not receipted (sic);
- (6) Uy Chin Ho will then pay UNIFISH for the quantity of sardines he had withdrawn from the corporation;

- Another fraudulent practice perpetrated by UNIFISH through Uy Chin Ho's direction is the sale of imported oil locally to different customers. This is a case of smuggling in the sense that UNIFISH, being an export company registered with the Board of Investments, is enjoying certain exemptions in their importation of oil as one of the raw materials in its processing of canned tuna for export. These tax exemptions are granted by the government on the condition that the oil is to be used only in the processing of tuna for export and that it is not to be sold unprocessed as is to local customers.

- Another fraudulent practice involves the sales of unused cans; UNIFISH also enjoys tax exemptions in its purchases of tin cans subject to the condition that these are to be used as containers for its processed tuna for export. These cans are never intended to be sold locally to other food processing companies.

- Prior to 1990, that is from 1980 to 1990, the factory of the UNIFISH PACKING CORPORATION was then run by the PREMIER INDUSTRIAL & DEVELOPMENT CORPORATION (hereinafter referred to as PREMIER) [,] which corporation was being controlled by the same majority stockholders as those now running and controlling UNIFISH; [a]t that time, PREMIER was also committing the same fraudulent acts as what is being perpetrated by UNIFISH at present.

- The records containing entries of actual volume of production and sales, of both UNIFISH AND PREMIER, are found in the office of the corporation at its factory site at H. Cortes Street, Mandaue City. The particular place or spot where these records [official receipts, sales invoices, delivery receipts, sales records or sales books, stock cards, accounting records (such as ledgers, journals, cash receipts books, and check disbursements books)] are kept and may be found is best described in the herein attached sketch of the arrangement of the office's furniture and fixture of the corporation which is made an integral part hereof and marked as Annex "A",

- He is executing this affidavit to attest under oath the veracity of the foregoing allegations and he is reserving his right to claim for reward under the provisions of Republic Act No. 2338.

On 1 October 1993, Nestor N. Labaria, Assistant Chief of the Special Investigation Branch of the BIR, applied for search warrants from Branch 28 of the Regional Trial Court of Cebu. The application sought permission to search the premises of Unifish.

After hearing the depositions of Labaria and Abos, Judge Mercedes Gozo-Dadole issued the disputed search warrants. The first[2] is docketed as "SEARCH WARRANT NO. 93-10-79 FOR: VIOLATION OF SECTION 253" ("Search Warrant A-1"), and consists of two pages. A verbatim reproduction of Search Warrant A-1 appears below:

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT OF CEBU
7th Judicial Region
Branch 28
Mandaue City

THE PEOPLE OF THE PHILIPPINES,

Plaintiff,

SEARCH WARRANT NO. 93-10-79 FOR:

VIOLATION OF SEC. 253

- versus -

UY CHIN HO alias FRANK UY,

Unifish Packing Corporation

Hernan Cortes St., Cebu City

x ----- /

(with sketch)

SEARCH WARRANT

TO ANY PEACE OFFICER:

GREETINGS:

It appearing to the satisfaction of the undersigned, after examination under oath (sic), Nestor N. Labaria, Asst. Chief, Special Investigation Branch, BIR and witness Rodrigo Abos that there is a (sic) probable cause to believe that the crime of violation of Section 253 - attempt to evade or defeat the tax has been committed and there is good and sufficient reason to believe that Uy Chin Ho c/o Unifish Packing Corporation, Hernan Cortes St., Mandaue City has in his possession, care and control, the following:

- Multiple sets of Books of Accounts; Ledgers, Journals, Columnar Books, Cash Register Books, Sales Books or Records; Provisional & Official Receipts;
- Production Record Books/Inventory Lists [,] Stock Cards;
- Unregistered Delivery Receipts;
- Unregistered Purchase & Sales Invoices;
- Sales Records, Job Order;
- Corporate Financial Records; and
- Bank Statements/Cancelled Checks

You are hereby commanded to make an immediate search at any time of day or night of said premises and its immediate vicinity and to forthwith seize and take possession of the articles above-mentioned and other properties relative to such violation and bring said properties to the undersigned to be dealt with as the law directs.

WITNESS MY HAND this 1[st] day of October, 1993.

(sgd.)

MERCEDES GOZO-DADOLE

Judge

The second warrant[3] is similarly docketed as "SEARCH WARRANT 93-10-79 FOR: VIOLATION OF SEC. 253" ("Search Warrant A-2"). Search Warrant A-2, reproduced below, is almost identical in content to Search Warrant A-1, save for the portions indicated in bold print. It consisted of only one page.

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT OF CEBU
7th Judicial Region
Branch 28
Mandaue City

THE PEOPLE OF THE PHILIPPINES,

Plaintiff,

SEARCH WARRANT NO. 93-10-79 FOR:

- versus -

VIOLATION OF SEC. 253

UY CHIN HO alias FRANK UY, and
Unifish Packing Corporation
Hernan Cortes St., Mandaue City

X ----- /

(with sketch)

SEARCH WARRANT

TO ANY PEACE OFFICER:

GREETINGS:

It appearing to the satisfaction of the undersigned, after examination under oath [sic], Nestor N. Labaria, Asst. Chief, Special Investigation Branch, BIR and witness Rodrigo Abos that there is a [sic] probable cause to believe that the crime of violation of Section 253 - attempt to evade or defeat the tax has been committed and there is good and sufficient reason to believe that Uy Chin Ho alias Frank Uy and Unifish Packing Corporation, Hernan Cortes St., Mandaue City has in his possession, care and control, the following:

- Multiple sets of Books of Accounts; Ledgers, Journals, Columnar Books, Cash Register Books, Sales Books or Records; Provisional & Official Receipts;
- Production Record Books/Inventory Lists [,] Stock Cards;
- Unregistered Delivery Receipts;
- Unregistered Purchase & Sales Invoices;
- Sales Records, Job Order;
- Corporate Financial Records; and
- Bank Statements/Cancelled Checks

You are hereby commanded to make an immediate search at any time of day or night of said premises and its immediate vicinity and to forthwith seize and take possession of the articles above-mentioned and other properties relative to such violation and bring said properties to the undersigned to be dealt with as the law directs.

WITNESS MY HAND this 1[st] day of October, 1993.

(sgd.)

MERCEDES GOZO-DADOLE

Judge

Judge Gozo-Dadole issued a third warrant,[4] which was docketed as "SEARCH WARRANT 93-10-80 FOR: VIOLATION OF SEC. 238 in relation to SEC. 263" (hereinafter, "Search Warrant B"). Except for the docket number and the designation of the crime in the body of the warrant ("Section 238 in relation to Sec. 263 - non-issuance of sales invoice and use and possession of unregistered delivery receipts and/or sales invoices"), Search Warrant B is a verbatim reproduction of Search Warrant A-2.

On the strength of these warrants, agents of the BIR, accompanied by members of the Philippine National Police, on 2 October 1993, searched the premises of the Unifish Packing Corporation. They seized, among other things, the records and documents of petitioner corporation. A return of said search was duly made by Nestor Labaria with the RTC of Cebu , Branch 28.

On 8 February 1995, the BIR filed against petitioners a case before the Department of Justice. The records, however, do not reveal the nature of this case.

On 31 March 1995, petitioners filed motions to quash the subject search warrants with Branch 28 of the Cebu RTC.

The RTC, however, denied petitioners' motions to quash as well as their subsequent motion for reconsideration, prompting petitioners to file a petition for certiorari with the Court of Appeals (CA). The CA dismissed their petition, holding that petitioners failed to comply with Section 2(a), Rule 6 of the Revised Internal Rules of the Court of Appeals (RIRCA), which states:

- a. What Should be Filed. - The petition shall be filed in seven (7) legible copies and a copy thereof shall be served on each of the respondents, and must be accompanied by a certified true copy of the decision or order complained of and true copies of the pleadings and other pertinent documents and papers. (As amended by S.Ct. Res., dated November 24, 1992).

The CA found that petitioners did not submit certified true copies of (1) the Motions to Quash, (2) the Motion for Reconsideration, and (3) the Affidavit of Rodrigo Abos.

The CA also held that certiorari was not the proper remedy to question the resolution denying the motion to quash.

In this case now before us, the available remedies to the petitioners, assuming that the Department of Justice will eventually file the case, are: a petition for reinvestigation; the right to post bail; a Motion to Quash the Information; and in case of denial, an appeal, after judgment on the merits, or after the case shall have been tried. This brings us to the case of *Lai vs. Intermediate 220 SCRA 149* and the pronouncement, thus:

Criminal Procedure: Certiorari: Certiorari should not be allowed where petitioner has other remedies available. -- Anent the remedy resorted to by petitioners (referring to the petition for certiorari) from the Regional Trial Court of Negros Oriental presided by Judge Diez, the same should not have been granted. Petitioners were not without plain, speedy and adequate remedies in the ordinary course of law against Judge Lomeda's order for their arrest. These remedies are as enumerated by respondent appellate court in its decision: "1. they can post bail for their provisional release; 2. They can ask the Provincial Fiscal for a reinvestigation of the charge against them. If unsatisfied with the fiscal's resolution they can ask for a review by the Minister of Justice; (Sec. 10), RA 5180 as amended by P.D. 911); 3. if their petition for review does not prosper, they can file a motion to quash the information in the trial court. (Rule 117, Rules of Court). 4. If the motion is denied, they can appeal the judgment of the court after the case shall have been tried on the merits. x x x

Where motion to quash is denied, remedy is not certiorari, but to go to trial.-- Moreover, in the case of Acharon vs. Purisima, this Court held that when a motion to quash a criminal case is denied, the remedy is not certiorari but to go to trial without prejudice to reiterating the special defenses involved in said Motion. In the event that an adverse decision is rendered after trial on the merits, an appeal therefrom should be the next legal step.

xxx

In this case now before Us, there is no pretention [sic] that the Court issued the Search Warrants without jurisdiction. On the contrary, it had jurisdiction. The argument therefore that the Court committed an error in not describing the persons or things to be searched; that the Search Warrants did not describe with particularity the things to be seized/taken; the absence of probable cause; and for having allegedly condoned the discriminating manner in which the properties were taken, to us, are merely errors in the Court's finding, certainly not correctible by certiorari, but instead thru an appeal.[5]

In any event, the CA ruled, no grave abuse of discretion amounting to lack of jurisdiction was committed by the RTC in the issuance of the warrants.

As petitioners' motion for reconsideration proved futile, petitioners filed the instant petition for review.

Petitioners claim that they did submit to the CA certified true copies of the pleadings and documents listed above along with their Petition, as well as in their Motion for Reconsideration. An examination of the CA Rollo, however, reveals that petitioners first submitted the same in their Reply, after respondents, in their Comment, pointed out petitioners' failure to attach them to the Petition.

Nevertheless, the CA should not have dismissed the petition on this ground although, to its credit, it did touch upon the merits of the case. First, it appears that the case could have been decided without these pleadings and documents. Second, even if the CA deemed them essential to the resolution of the case, it could have asked for the records from the RTC. Third, in a similar case,[6] we held that the submission of a document together with the motion for reconsideration constitutes substantial compliance with Section 3, Rule 46 of the Rules of Court, requiring the submission of a certified true copy of "material portions of the record as are referred to [in the petition], and other documents relevant or pertinent thereto" along with the petition. So should it be in this case, especially considering that it involves an alleged violation of a constitutionally guaranteed right. The rules of procedure are not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure substantial justice. If a technical and rigid enforcement of the rules is made, their aim could be defeated.[7]

The CA likewise erred in holding that petitioners cannot avail of certiorari to question the resolution denying their motions to quash the subject search warrants. We note that the case of "Lai vs. Intermediate," cited by the appellate court as authority for its ruling does not appear in "220 SCRA 149." The excerpt of the syllabus quoted by the court, as observed by petitioners,[8] appears to have been taken from the case of Yap vs. Intermediate Appellate Court, 220 SCRA 245 (1993). Yap, however, is inapplicable since that case involved a motion to quash

a complaint for qualified theft, not a motion to quash a search warrant.

The applicable case is *Marcelo vs. De Guzman*,^[9] where we held that the issuing judge's disregard of the requirements for the issuance of a search warrant constitutes grave abuse of discretion, which may be remedied by certiorari:

Expressly announced in Section 1, Rule 65 of the Rules of Court is the general rule that certiorari is available where a tribunal or officer exercising judicial functions "has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law."

In the light of the findings of the lower court, herein above quoted, it is indisputable that Judge de Guzman gravely abused his discretion in issuing the said search warrant. Indeed, he acted whimsically and capriciously when he ignored the explicit mandate of Section 3, Rule 126 of the Rules of Court that "a search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the municipal or city 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; and that "no search warrant shall issue for more than one specific offense."

The utter disregard by Judge de Guzman of the requirements laid down by the said rule renders the warrant in question absolutely null and void. It has been held that where the order complained of is a patent nullity, a petition for certiorari and mandamus may properly be entertained despite the existence of the remedy of appeal.

Moreover, an appeal from the order of Judge de Guzman would neither be an adequate nor speedy remedy to relieve appellee of the injurious effects of the warrant. The seizure of her personal property had resulted in the total paralyzation of the articles and documents which had been improperly seized. Where the remedy of appeal cannot afford an adequate and expeditious relief, certiorari can be allowed as a mode of redress to prevent irreparable damage and injury to a party.

This Court had occasion to reiterate the above pronouncement in *Silva vs. Presiding Judge, RTC of Negros Oriental*, Br. XXXIII,^[10] which also involved a special civil action for certiorari:^[11]

Thus, in issuing a search warrant, the judge must strictly comply with the constitutional requirement that he must determine the existence of probable cause by examining the applicant and his witnesses in the form of searching questions and answers. His failure to comply with this requirement constitutes grave abuse of discretion. As declared in *Marcelo vs. De Guzman*, G.R. No. L-29077, June 29, 1982, 114 SCRA 657, "the capricious disregard by the judge in not complying with the requirements before issuance of search warrants constitutes grave abuse of discretion".

In this case, petitioners alleged in their petition before the CA that the issuing judge violated the pertinent provisions of the Constitution and the Rules of Court in issuing the disputed search warrants, which, if true, would have constituted grave abuse of discretion. Petitioners also alleged that the enforcers of the warrants seized almost all the records and documents of the corporation thus resulting in the paralysis of its business. Appeal, therefore, would not be an adequate remedy that would afford petitioners expeditious relief.

We now proceed to the merits of the case.

Section 2, Article III of the Constitution guarantees the right of the people against unreasonable searches and seizures:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of

arrest shall issue except upon probable cause to be determined personally 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.

In relation to the above provision, Rule 126 of the Rules of Court provides:

SEC. 3. Requisite for issuing search warrant. - A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined personally 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 things to be seized.

SEC. 4. Examination of complainant; record. - The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted.

A search warrant must conform strictly to the requirements of the foregoing constitutional and statutory provisions. These requirements, in outline form, are:

- (1) the warrant must be issued upon probable cause;
- (2) the probable cause must be determined by the judge himself and not by the applicant or any other person;
- (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and
- (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized.[12]

The absence of any of these requisites will cause the downright nullification of the search warrants.[13] The proceedings upon search warrants must be absolutely legal, "for there is not a description of process known to the law, the execution of which is more distressing to the citizen. Perhaps there is none which excites such intense feeling in consequence of its humiliating and degrading effect." The warrants will always be construed strictly without, however, going the full length of requiring technical accuracy. No presumptions of regularity are to be invoked in aid of the process when an officer undertakes to justify under it.[14]

Petitioners contend that there are several defects in the subject warrants that command their nullification. They point out inconsistencies in the description of the place to be searched in Search Warrant A-1, as well as inconsistencies in the names of the persons against whom Search Warrants A-1 and A-2 were issued. That two search warrants (Search Warrants A-1 and A-2) were issued for the same crime, for the same place, at a single occasion is cited as another irregularity. Petitioners also dispute the existence of probable cause that would justify the issuance of the warrants. Finally, they claim that the things to be seized were not described with particularity. These defects, according to petitioners, render the objects seized inadmissible in evidence.[15]

Inconsistencies in the
description of the
place to be searched

Petitioners observe that the caption of Search Warrant A-1 indicates the address of Uy Chin Ho alias Frank Uy as "Hernan Cortes St., Cebu City" while the body of the same warrant states the address as "Hernan Cortes St., Mandaue City." Parenthetically, Search Warrants A-2 and B consistently state the address of petitioner as "Hernan Cortes St., Mandaue City."

The Constitution requires, for the validity of a search warrant, that there be a particular description of "the place to be searched and the persons of things to be seized." [16] The rule is that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended [17] and distinguish it from other places in the community. [18] Any designation or description known to the locality that points out the place to the exclusion of all others, and on inquiry leads the officers unerringly to it, satisfies the constitutional requirement. [19] Thus, in *Castro vs. Pabalan*, [20] where the search warrant mistakenly identified the residence of the petitioners therein as Barrio Padasil instead of the adjoining Barrio Maria Cristina, this Court "admitted that the deficiency in the writ is not of sufficient gravity to call for its invalidation."

In this case, it was not shown that a street similarly named Hernan Cortes could be found in Cebu City. Nor was it established that the enforcing officers had any difficulty in locating the premises of petitioner corporation. That Search Warrant A-1, therefore, inconsistently identified the city where the premises to be searched is not a defect that would spell the warrant's invalidation in this case.

Inconsistencies in the
description of the
persons named in the
two warrants

Petitioners also find fault in the description of the names of the persons in Search Warrants A-1 and A-2. Search Warrant A-1 was issued solely against "Uy Chin Ho alias Frank Uy." Search Warrant A-2, on the other hand, was directed against "UY CHIN HO alias FRANK UY, and Unifish Packing Corporation."

These discrepancies are hardly relevant.

In *Miller v. Sigler*, [21] it was held that the Fourth Amendment of the United States Constitution, from which Section 2, Article III of our own Constitution is historically derived, does not require the warrant to name the person who occupies the described premises. Where the search warrant is issued for the search of specifically described premises only and not for the search of a person, the failure to name the owner or occupant of such property in the affidavit and search warrant does not invalidate the warrant; and where the name of the owner of the premises sought to be searched is incorrectly inserted in the search warrant, it is not a fatal defect if the legal description of the premises to be searched is otherwise correct so that no discretion is left to the officer making the search as to the place to be searched. [22]

Since, in the case at bar, the warrant was issued not for search of the persons owning or occupying the premises, but only a search of the premises occupied by them, the search could not be declared unlawful or in violation of the constitutional rights of the owner or occupants of the premises, because of inconsistencies in stating their names. [23]

Two warrants issued
at one time for one
crime and one place

In any event, Search Warrant A-1 should be deemed superseded by Search Warrant A-2.

Two warrants, Search Warrants A-1 and A-2, were actually issued by the trial court for the same crime (violation of "SEC. 253" of the National Internal Revenue Code). It appears, however, that Search Warrant A-2 was issued merely to correct the inconsistencies in the address in Search Warrant A-1, as well as to include Unifish Packing Corporation as a party against whom the warrant was issued. Search Warrant A-2 was evidently an attempt by the issuing judge to be more precise in the names of the persons against whom the warrant was issued and in the

description of the place to be searched. Indeed, it would be absurd for the judge to issue on a single occasion two warrants authorizing the search of a single place for a single offense. Inasmuch as the apparent intent in issuing Search Warrant A-2 was to supersede Search Warrant A-1, the latter should be deemed revoked by the former.

The alleged absence of
probable cause

Petitioners claim there was no probable cause for Judge Gozo-Dadole to issue the subject search warrants.

Probable cause is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[24]

In the determination of probable cause, the Constitution and the Rules of Court require an examination of the witnesses under oath. The examination must be probing and exhaustive, not merely routine or pro forma. The examining magistrate must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application.[25] Asking of leading questions to the deponent in an application for search warrant, and conducting of examination in a general manner, would not satisfy the requirements for issuance of a valid search warrant.[26]

The witnesses, in turn, must testify under oath to facts of their own personal knowledge. The oath required must refer to the truth of the facts within the personal knowledge of the petitioner or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause.[27] Search warrants are not issued on loose, vague or doubtful basis of fact, nor on mere suspicion or belief.[28]

It may be recalled that before issuing the warrants, the judge deposed two witnesses, namely, Nestor Labaria of the BIR, and Rodrigo Abos, who claimed to be an old employee of Unifish. Petitioners claim that the testimonies of Labaria and Abos are hearsay. We agree with this contention, but only as to the testimony of Labaria, who stated during the examination:

Q.

Do you know of a certain Uy Chin Ho alias Frank Uy?

A.

No.

Q.

Do you know his establishment known as Unifish Packing Corporation?

A.

I have only heard of that thru the affidavit of our informer, Mr. Abos.

Q.

Why are you applying for search warrant in the premises of Unifish Packing Corporation?

A.

Because of that information we received that they are using only delivery receipts instead of the legal sales invoices. It is highly indicative of fraud.

Q.

From where did you get that information?

A.

From our informer, the former employee of that establishment.[29]

The above portion of the transcript shows that Labaria's knowledge of the alleged illegal activities of petitioners was acquired not through his own perception but was merely supplied by Abos. Therefore, the deposition of Labaria, which is based on hearsay, standing alone, cannot justify the issuance of the search warrants.[30]

The application for the warrants, however, is not based solely on Labaria's deposition but is supported by that of Abos, whose knowledge of petitioners' alleged illegal practices was apparently obtained during his employment with Unifish. In his deposition, Abos detailed the schemes employed by Frank Uy and Unifish to evade the payment of taxes, and described the place where the documents supposedly evidencing these schemes were located:

Q

Do you know Frank Uy?

A

Yes.

Q

Why do you know him?

A

Because I were (sic) an employee of his from 1980 until August of 1993.

Q

Where is this Unifish Packing Corporation located?

A

Hernan Cortes St.

Q

What is it being engaged of?

A

It is engaged in canning of fish.

Q

You have executed an affidavit here to the effect that it seems that in his business dealings that he is actually doing something that perpetrated tax evasion. Is that correct?

A

Yes.

Q

How is it done?

A

As an officer, he is an active member of the corporation who is at the same time making his authority as appointing himself as the distributor of the company's products. He sells these products thru supermarkets in Visayas and Mindanao, in fact, the whole Philippines. He makes it appear that it is the company which is selling when actually it is him selling the goods and he does not issue any invoices.

Q Since he does not issue any invoices, how is it done?

A Thru delivery receipts.

Q Is the delivery receipt official?

A No. It is unregistered.

Q For how long has this been going on?

A As far as I know, it is still in 1986 since we started producing the sardines.

Q When was the last time that you observed that that is what he is doing?

A August, 1993, last month.

Q How did you happen to know about this last month?

A

Because he delivered to certain supermarkets and the payments of that supermarket did not go directly to the company. It went to him and he is the one who paid the company for the goods that he sold.

Q

Can you tell this Court the name of that certain supermarkets?

A

White Gold and Gaisano.

Q

How did you know this fact?

A

As a manager of the company I have access to all the records of that company for the last three years. I was the Operating Chief.

Q

Until now?

A

No. I was separated already.

Q

When?

A

August, 1993. Q How does he do this manipulation?

A

He sells the goods to the supermarkets after which the company, Unifish will deliver to his customers, then his customers will pay directly to him and in turn, he pays to the company.

Q And these transactions, were they reflected in their books of account or ledger or whatever?

A It is written but it is supposed to be a secret transaction. It is not for the public, not for the BIR but it is only for the purpose of keeping the transactions between the company and him. It is not made to be shown to the BIR.

Q In that books of account, is it reflected that they have made some deliveries to certain supermarkets?

A Yes.

Q For the consumption of the BIR what are the papers that they show? .

A It is the private accounting firm that prepares everything.

Q Based on what?

A Based on some fictitious records just as they wish to declare.

Q

In your affidavit you stated that there are sales invoices, official receipts, delivery receipts, sales records, etc. These documents are records that you have stated, in your affidavit, which are only for the consumption of the company?

A

Yes, not for the BIR

Q Where are they kept now?

A

They are kept on the table which I have drawn in the sketch. This is the bird's eyeview (sic) of the whole office. When you enter thru the door this Gina Tan is the one recording all the confidential transactions of the company. In this table you can find all the ledgers and notebooks.

Q This sketch is a blow-up of this portion, Exh. "A"?

A

Yes. Exh. "B" is the blow-up of Exh. "A" inside the office. In this blow-up there are four personnel plus one new personnel. Gina Tan collects all the records from this girl and this girl makes the statements. This first girl delivers the receipts. The second girl prepares the bill of lading. The third girl keeps the inventory of all the stocks. This sketch here is the bodega where the records are kept. The records from these people are stored in this place which is marked as "C".

Q So what you want to impress on that now is that only current records are kept by Gina because according to you the whole records are already placed in the bodega?

A Yes.

Q But how can you enter the bodega?

A

Here, from the main entrance there is a door which will lead to this part here. If you go straight there is a bodega there and there is also a guard from this exit right after opening the door.

Q The problem is that, when actually in August have you seen the current records kept by Gina?

A I cannot exactly recall but I have the xerox copies of the records.

Q Where are they now?

A They are in my possession (witness handling [sic] to the Court a bunch of records).

Q

The transactions that are reflected in these xerox copies that you have given me, especially this one which seems to be pages of a ledger, they show that these are for the months of January, February, March, April and May. Are these transactions reflected in these xerox copies which appear in the ledger being shown to the BIR?

A As far as I know, it did not appear.

Q What about this one which says Columnar Book Cash Receipt for the month of January, what does it show?

A It shows that Frank Uy is the one purchasing from the company and these are his customers.

Q Do these entries appear in the columnar books which are the basis for the report to the BIR?

A As far as I know, it does not reflect.

Q

What are these xerox copies of checks?

A

I think we cannot trace it up. These ones are the memos received by Unifish for payment of sardines. This is the statement of the company given to Uy Chin Ho for collection.

Q

It is also stated in your affidavit that the company imported soya oil. How is it done?

A

The company imports soya oil to be used as a component in the processing of canned tuna for export. The company enjoys certain BOI privilege and so it is tax free. As far as I know, they profit more to dispose the product locally. Whatever excess of this soya oil are sold to another company.

Q

Is that fact reflected in the xerox copies?

A

No. I have the actual delivery receipt.

Q

In other words, the company imports soya oil supposedly to be used as a raw material but instead they are selling it locally?

A

Yes. ([W]itness showing DR No. 3053 dated November 13, 1991.) This delivery receipt was the delivery receipt to Celebes Canning Corp. of the 90 grams soya oil.

Q

In other words, this soya oil should have to be used by Unifish but instead they are seeling (sic) it?

A Yes, at a profit.

Q You also said that there is tax evasion in the selling of cans. What do you mean by this?

A

There is another privileged [sic] by the BOI for a special price given to packaging materials. When you export the product there is a 50% price difference. Now, taking that advantage of that exemption, they sold it to certain company here, again to Virginia Farms.

Q Do you have proof to that effect?

A No, but we can get it there.

Q

Will that fact be shown in any listed articles in the application for search warrant since according to you, you have seen this manipulation reflected on the books of account kept by Gina? Are you sure that these documents are still there?

A Yes. I have received information.

COURT: Alright.[31]

Abos stated that, as former Operating Chief of Unifish, he had access to the company records, and even showed the issuing judge photocopies thereof. Thus, we reject the contention that this witness did not have personal knowledge of the facts to which he testified. The contents of the deposition clearly demonstrate otherwise.

The deposition also shows that, contrary to petitioners' submission, the inquiries made by the judge were far from leading or being a rehash of the witness' affidavit. We find such inquiries to be sufficiently probing.

Alleged lack of
particularity in the
description of the
things seized

Petitioners note the similarities in the description of the things to be seized in the subject warrants and those in *Stonehill vs. Diokno*,[32] *Bache & Co. (Phil.), Inc. vs. Ruiz*,[33] and *Asian Surety & Insurance Co., Inc. vs. Herrera*. [34]

In *Stonehill*, the effects to be searched and seized were described as:

"Books of accounts, financial records, vouchers, journals correspondence, receipts, ledgers, portfolios, credit journals, typewriters, and other documents and/or papers showing all business transactions including disbursement receipts, balance sheets and related profit and loss statements."

This Court found that the foregoing description failed to conform to the requirements set forth by the Constitution since:

x x x the warrants authorized the search for and seizure of records pertaining to all business transactions of petitioners herein, regardless of whether the transactions were legal or illegal. The warrants sanctioned the seizure of all records of the petitioners and the aforementioned corporations, whatever their nature, thus openly contravening the explicit command of our Bill of Rights - that the things to be seized be particularly described - as well as tending to defeat its major object: the elimination of general warrants.

In *Bache & Co.*, this Court struck down a warrant containing a similar description as those in *Stonehill*:

The documents, papers, and effects sought to be seized are described in Search Warrant No. 2-M-70 in this

manner:

"Unregistered and private books of accounts (ledgers, journals, columnars, receipts and disbursements books, customers' ledgers); receipts for payments received; certificates of stocks and securities; contracts, promissory notes and deeds of sale; telex and coded messages; business communications; accounting and business records; checks and check stubs; records of bank deposits and withdrawals; and records of foreign remittances, covering the years 1966 to 1970."

The description does not meet the requirement in Art. III, Sec. 1, of the Constitution, and of Sec. 3, Rule 126 of the Revised Rules of Court, that the warrant should particularly describe the things to be seized.

X X X

In *Uy Kheylin, et al. vs. Villareal, etc., et al.*, 42 Phil. 886, 896, this Court 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. 68 (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 abuses may not be committed. That is the correct interpretation of this constitutional provision borne out by the American authorities."

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

A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (*People vs. Rubio*, 57 Phil. 384); or when the description expresses a conclusion of fact - not of law - by which the warrant officer may be guided in making the search and seizure (*idem.*, dissent of *Abad Santos, J.*); or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued (Sec. 2, Rule 126, Revised Rules of Court). The herein search warrant does not conform to any of the foregoing tests. If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence. In this event, the description contained in the herein disputed warrant should have mentioned, at least, the dates, amounts, persons, and other pertinent data regarding the receipts of payments, certificates of stocks and securities, contracts, promissory notes, deeds of sale, messages and communications, checks, bank deposits and withdrawals, records of foreign remittances, among others, enumerated in the warrant.

In *Asian Surety & Insurance Co., Inc. vs. Herrera*, the description of the things to be seized, i.e., "Fire Registers, Loss, Bordereau, Adjusters' Report, including subrogation receipts and proof of loss, Loss Registers, Book of Accounts including cash receipts and disbursements and general ledger, etc." was held to be "an omnibus description" and, therefore, invalid:

X X X Because of this all embracing description which includes all conceivable records of petitioner corporation, which if seized X X X, could paralyze its business, 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. 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 at bar, the things to be seized were described in the following manner:

- Multiple sets of Books of Accounts; Ledgers, Journals, Columnar Books, Cash Register Books, Sales Books or Records; Provisional & Official Receipts;
- Production Record Books/Inventory Lists [,] Stock Cards;
- Unregistered Delivery Receipts;
- Unregistered Purchase & Sales Invoices;
- Sales Records, Job Order;
- Corporate Financial Records; and
- Bank Statements/Cancelled Checks

We agree that most of the items listed in the warrants fail to meet the test of particularity, especially since witness Abos had furnished the judge photocopies of the documents sought to be seized. The issuing judge could have formed a more specific description of these documents from said photocopies instead of merely employing a generic description thereof. The use of a generic term or a general description in a warrant is acceptable only when a more specific description of the things to be seized is unavailable. The failure to employ the specificity available will invalidate a general description in a warrant.[35] The use by the issuing judge of the terms "multiple sets of books of accounts, ledgers, journals, columnar books, cash register books, sales books or records, provisional & official receipts," "production record books/inventory lists, stock cards," "sales records, job order," "corporate financial records," and "bank statements/cancelled checks" is therefore unacceptable considering the circumstances of this case.

As regards the terms "unregistered delivery receipts" and "unregistered purchase & sales invoices," however, we hold otherwise. The Solicitor General correctly argues that the serial markings of these documents need not be specified as it is not possible to do so precisely because they are unregistered.[36] Where, by the nature of the goods to be seized, their description must be rather general, it is not required that a technical description be given, as this would mean that no warrant could issue. Taking into consideration the nature of the articles so described, it is clear that no other more adequate and detailed description could have been given, particularly because it is difficult to give a particular description of the contents thereof.[37] Although it appears that photocopies of these unregistered documents were among those handed by Abos to the issuing judge, it would be impractical to require the latter to specify each and every receipt and invoice, and the contents thereof, to the minutest detail.

The general description of most of the documents listed in the warrants does not render the entire warrant void. Insofar as the warrants authorize the search and seizure of unregistered delivery receipts and unregistered purchase and sales invoices, the warrants remain valid. The search warrant is severable, and those items not particularly described may be cut off without destroying the whole warrant. In *United States v. Cook*, [38] the United States Court of Appeals (Fifth Circuit) made the following pronouncement:

x x x. The leading decision is *Aday v. Superior Court*, 53 Cal.2d 789, 362 P.2d 47, 13 Cal.Rptr. 415 (1961). In *Aday*, a warrant was issued authorizing the seizure of two particularly described books and myriad other generally described items. On appeal, the California Supreme Court held that only the books were particularly described in the warrant and lawfully seized. The court acknowledged that the warrant was flawed, but rather than suppress everything seized, the court chose to sever the defective portions of the warrant and suppress only those items that were not particularly described.

Although the warrant was defective x x x it does not follow that it was invalid as a whole. Such a conclusion

would mean that the seizure of certain articles, even though proper if viewed separately, must be condemned merely because the warrant was defective with respect to other articles. The invalid portions of the warrant are severable from the authorization relating to the named books x x x.

The search for and seizure of these books, if otherwise valid, were not rendered illegal by the defects concerning other articles.

x x x

x x x We agree with the reasoning of the Supreme Court of California and the majority of state courts that have considered this question and hold that in the usual case the district judge should sever the infirm portion of the search warrant as passes constitutional muster. See *United States v. Giresi*, 488 F.Supp. 445, 459-60 (D.N.J.1980). Items that were not described with the requisite particularity in the warrant should be suppressed, but suppression of all of the fruits of the search is hardly consistent with the purposes underlying exclusion. Suppression of only the items improperly described prohibits the Government from profiting from its own wrong and removes the court from considering illegally obtained evidence. Moreover, suppression of only those items that were not particularly described serves as an effective deterrent to those in the Government who would be tempted to secure a warrant without the necessary description. As the leading commentator has observed, "it would be harsh medicine indeed if a warrant which was issued on probable cause and which did particularly describe certain items were to be invalidated in toto merely because the affiant and the magistrate erred in seeking and permitting a search for other items as well." 2 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* §4.6(f) (1978).

Accordingly, the items not particularly described in the warrants ought to be returned to petitioners.

Petitioners allege that the following articles, though not listed in the warrants, were also taken by the enforcing officers:

- One (1) composition notebook containing Chinese characters,"
- Two (2) pages writing with Chinese characters,
- Two (2) pages Chinese character writing,
- Two (2) packs of chemicals,
- One (1) bound gate pass,
- Surety Agreement.[39]

In addition, the searching party also seized items belonging to the Premier Industrial and Development Corporation (PIDC), which shares an office with petitioner Unifish.

The things belonging to petitioner not specifically mentioned in the warrants, like those not particularly described, must be ordered returned to petitioners. In order to comply with the constitutional provisions regulating the issuance of search warrants, the property to be seized under a warrant must be particularly described therein and no other property can be taken thereunder.[40] In *Tambasen vs. People*,[41] it was held:

Moreover, by their seizure of articles not described in the search warrant, the police acted beyond the parameters of their authority under the search warrant. Section 2, Article III of the 1987 Constitution requires that a search warrant should particularly describe the things to be seized. "The evident purpose and intent of the 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 should seize, to the end that unreasonable searches and seizures may not be made and that abuses may not be committed" (*Corro v. Lising*, 137 SCRA 541, 547 [1985]); *Bache & Co. [Phil.], Inc. v. Ruiz*, 37 SCRA 823 [1971]; *Uy Kheytn v.*

Villareal, 42 Phil. 886 [1920]). The same constitutional provision is also aimed at preventing violations of security in person and property and unlawful invasions of the sanctity of the home, and giving remedy against such usurpations when attempted (People v. Damaso, 212 SCRA 547 [1992] citing Alvero v. Dizon, 76 Phil. 637, 646 [1946]).

Clearly then, the money which was not indicated in the search warrant, had been illegally seized from petitioner. The fact that the members of the police team were doing their task of pursuing subversives is not a valid excuse for the illegal seizure. The presumption juris tantum of regularity in the performance of official duty cannot by itself prevail against the constitutionally protected right of an individual (People v. Cruz, 231 SCRA 759 [1994]; People v. Veloso, 48 Phil. 169, 176 [1925]). Although public welfare is the foundation of the power to search and seize, such power must be exercised and the law enforced without transgressing the constitutional rights of the citizens (People v. Damaso, supra, citing Rodriguez v. Evangelista, 65 Phil. 230, 235 [1937]). As the Court aptly puts it in Bagahilog v. Fernandez, 198 SCRA 614 (1991), "[z]eal in the pursuit of criminals cannot ennoble the use of arbitrary methods that the Constitution itself abhors."

The seizure of the items not specified in the warrants cannot be justified by the directive in the penultimate paragraph thereof to "seize and take possession of other properties relative to such violation," which in no way can be characterized as a particular description of the things to be seized.

As regards the articles supposedly belonging to PIDC, we cannot order their return in the present proceedings. The legality of a seizure can be contested only by the party whose rights have been impaired thereby, and the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties.[42]

WHEREFORE, the Resolutions of respondent Court of Appeals dated 27 June 1996 and 14 May 1987, affirming the Order of the Regional Trial Court dated 17 July 1995, are hereby **AFFIRMED** insofar as said Resolutions upheld the validity of the subject Search Warrants authorizing the seizure of the unregistered delivery receipts and unregistered purchase and sales invoices, but **REVERSED** with respect to the rest of the articles subject of said warrants. The respondent Bureau of Internal Revenue is hereby ordered to return to petitioners all items seized from the subject premises and belonging to petitioners, except the unregistered delivery receipts and unregistered purchase and sales invoices.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, p. 264.

[2] Id., at 80-81.

[3] Id., at 82.

[4] Id., at 83.

[5] Id., at 71-72, 78. Underscoring in the original.

[6] Balagtas Multi-Purpose Cooperative, Inc. and Aurelio Santiago vs. Court of Appeals, National Labor Relations Commission and Josefina Herrero, G.R. No. 138520, September 16, 1999.

[7] Id., citing Director of Lands vs. The Hon. Court of Appeals, 303 SCRA 495 (1999).

[8] At note 25, p. 29 of the Petition. (Rollo, p. 55).

[9] 114 SCRA 657 (1982), cited in the Petition at p. 27. (Rollo, p. 53).

[10] 203 SCRA 140 (1991).

[11] See also the following cases, which the Court took cognizance of, and resolved, without regard to the question of whether the special civil action (not an appeal) employed was the appropriate remedy: Benjamin V. Kho and Elizabeth Alindogan vs. Hon. Roberto L. Makalintal and National Bureau of Investigation, 306 SCRA 70 (1999), and Castro vs. Pabalan, 70 SCRA 477 (1976) (certiorari); Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33 (1937) (mandamus); Corro vs. Lising, 137 SCRA 541 (1985) (certiorari and mandamus); Tambasen vs. People, 246 SCRA 184 (1995) and Paper Industries Corporation of the Philippines, et al. vs. Judge Maximiniano C. Asuncion, et al., 307 SCRA 253 (1999) (certiorari and prohibition); Uy Kheylin vs. Villareal, 42 Phil. 886 (1920) (injunction and prohibition), Nolasco vs. Paño, 139 SCRA 541 (1985) (certiorari, mandamus and prohibition); Stonehill vs. Diokno, 20 SCRA 383 (1967), Bache & Co.(Phil.), Inc. vs. Ruiz, 37 SCRA 823 (1971), Burgos, Sr. vs. Chief of Staff, AFP, 133 SCRA 800 (1984), and Oca vs. Marquez, 14 SCRA 735 (1965) (certiorari, prohibition, mandamus and injunction). See also Asian Surety & Insurance Co., Inc. vs. Herrera, 54 SCRA 312 (1973), which involved a "petition to quash and annul a search warrant."

[12] Republic vs. Sandiganbayan, 255 SCRA 438 (1996).

[13] Id.

[14] People vs. Veloso, 48 Phil. 169 (1925).

[15] See Section 3 (2), Article III, Constitution in relation to Section 2, Article III, Constitution.

[16] Castro vs. Pabalan, supra.

[17] Prudente vs. Dayrit, 180 SCRA 69 (1989).

[18] Ex Parte Flores, 452 S.W.2d 443 (1970), citing Rhodes v. State, 134 Tex.Cr.R. 553, 116 S.W.2d 395.

[19] Joyner v. City of Lakeland, Fla., 90 So.2d 118, citing Bonner v. State, Fla., 80 So.2d 683.

[20] Supra.

[21] 353 F.2d 424 (1965).

[22] Williams v. State, 240 P.2d 1132 (1952), quoting Cook v. State, 75 Okl.Cr. 402, 132 P.2d 349.

[23] See Bell v. State, 423 S.W.2d 482 (1968).

[24] Pendon vs. Court of Appeals, 191 SCRA 429 (1990); Prudente vs. Dayrit, supra.

[25] Pendon vs. Court of Appeals, supra.

[26] Prudente vs. Dayrit, supra.

[27] Alvarez vs. Court of First Instance of Tayabas, supra.

[28] Quintero vs. National Bureau of Investigation, 162 SCRA 467 (1988).

[29] TSN, October 1, 1993, p. 2. Rollo, p. 85. Underscoring supplied.

[30] See Quintero vs. National Bureau of Investigation, supra.

[31] Rollo, pp. 86-94.

[32] Supra.

[33] Supra.

[34] Supra.

[35] United States v. Cook, 657 F.2d 730 (1981).

[36] Rollo, p. 155.

[37] Alvarez vs. Court of First Instance of Tayabas, supra.

[38] Supra.

[39] Rollo, p. 44.

[40] Uy Kheylin vs. Villareal, supra.

[41] Supra.

[42] Stonehill vs. Diokno, supra; Nasiad vs. Court of Tax Appeals, 61 SCRA 238 (1974); Lim vs. Ponce de Leon, 66 SCRA 299 (1975).

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