SOLID TRIANGLE SALES CORPORATION AND ROBERT SITCHON, PETITIONERS, VS. THE SHERIFF OF RTC QC, BRANCH 93; SANLY CORPORATION, ERA RADIO AND ELECTRICAL SUPPLY, LWT CO., INCORPORATED...

G.R. No. 144309. November 23, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The petition at bar stems from two cases, Search Warrant Case No. Q-3324 (99) before Branch 93 of the Quezon City Regional Trial Court (RTC), and Civil Case No. Q-93-37206 for damages and injunctions before Branch 91 of the same court.

The facts are set forth in the Decision of the Court of Appeals dated July 6, 1999:

> x x x on January 28, 1999, Judge Apolinario D. Bruselas, Jr., Presiding Judge of RTC, Branch 93, Quezon City, upon application of the Economic Intelligence and Investigation Bureau (EIIB), issued Search Warrant No. 3324 (99) against Sanly Corporation (Sanly), respondent, for violation of Section 168 of R.A. No. 8293 (unfair competition).
>
> By virtue of Search Warrant No. 3324 (99), EIIB agents seized 451 boxes of Mitsubishi photographic color paper from respondent Sanly. xxx
>
> Forthwith, Solid Triangle, through Robert Sitchon, its Marketing and Communication Manager, filed with the Office of the City Prosecutor, Quezon City, an affidavit complaint for unfair competition against the members of the Board of Sanly and LWT Co., Inc. (LWT), docketed as I.S. No. 1-99-2870.
>
> Sitchon alleged that ERA Radio and Electrical Supply (ERA), owned and operated by LWT, is in conspiracy with Sanly in selling and/or distributing Mitsubishi brand photo paper to the damage and prejudice of Solid Triangle, [which claims to be the sole and exclusive distributor thereof, pursuant to an agreement with the Mitsubishi Corporation].
>
> On February 4, 1999, petitioner Solid Triangle filed with Judge Bruselas' sala an urgent ex parte motion for the transfer of custody of the seized Mitsubishi photo color paper stored in the office of EIIB.
>
> On February 8, 1999, respondents Sanly, LWT and ERA moved to quash the search warrant which was denied by Judge Bruselas in an order dated March 5, 1999.
>
> The said respondents filed a motion for reconsideration which was granted by Judge Bruselas in the first assailed order of March 18, 1999. Respondent Judge held that there is doubt whether the act complained of (unfair competition) is criminal in nature.
>
> Petitioner Solid Triangle filed a motion for reconsideration contending that the quashal of the search warrant is not proper considering the pendency of the preliminary investigation in I.S. No. 1-99-2870 for unfair competition wherein the seized items will be used as evidence.

> On March 26, 1999, Judge Bruselas issued the second assailed order denying Solid Triangle's motion for reconsideration.
>
> On March 29, 1999, petitioner Solid Triangle filed with Branch 91 of the same Court, presided by Judge Lita S. Tolentino-Genilo, Civil Case No. Q-99-37206 for damages and injunction with prayer for writs of preliminary injunction and attachment. Impleaded as defendants were Sanly, LWT and ERA.
>
> On March 30, 1999, the defendants filed their opposition to the application for the issuance of writs of injunction and attachment.
>
> On March 31, 1999, Judge Genilo denied petitioner's application for a preliminary attachment on the ground that the application is not supported with an affidavit by the applicant, through its authorized officer, who personally knows the facts.
>
> Meanwhile, on April 20, 1999, Judge Bruselas issued the third assailed order, the dispositive portion of which reads:
> WHEREFORE, the foregoing premises considered, the court directs -
>
> 1) EIIB, Mr. Robert Sitchon and Solid Triangle Sales Corporation to divulge and report to the court the exact location of the warehouse where the goods subject of this proceeding are presently kept within seventy-two hours from receipt hereof;
>
> 2) Mr. Rober Sitchon and Solid Triangle Sales Corporation to appear and show cause why they should not be held in contempt of court for failure to obey a lawful order of the court at a hearing for the purpose on 12 May 1999 at 8:30 o'clock in the morning;
>
> 3) The Deputy Sheriff of this Court to take custody of the seized goods and cause their delivery to the person from whom the goods were seized without further lost [sic] of time;
>
> Let a copy of this order be served by personal service upon Mr. Robert Sitchon and Solid Triangle Sales Corporation. Serve copies also to EIIB and the respondents Rod Castro and Sanly Corporation.
>
> SO ORDERED.[1]

Alleging grave abuse of discretion, petitioners questioned before the Court of Appeals the orders of Branch 93 of the Quezon City RTC granting private respondents' motion for reconsideration and denying that of petitioners', as well as the order dated April 20, 1999 directing petitioners to, among other things, show cause why they should not be held in contempt. Petitioners also assailed the order of the Quezon City RTC, Branch 91 denying their application for a writ of attachment. Upon the filing of the petition on April 26, 1999, the Court of Appeals issued a temporary restraining order to prevent Judge Bruselas from implementing the Order dated April 20, 1999.

On July 6, 1999, the Court of Appeals rendered judgment initially granting certiorari. It held that the quashing of the warrant deprived the prosecution of vital evidence to determine probable cause.

> Admittedly, the City Prosecutor of Quezon City has filed a complaint for unfair competition against private respondents and that the undergoing preliminary investigation is in progress. In the said proceedings, the prosecution inevitably will present the seized items to establish a prima facie case of unfair competition against private respondents.
>
> Considering that Judge Bruselas quashed the search warrant, he practically deprived the prosecution of its evidence so vital in establishing the existence of probable cause.
>
> Petitioners' reliance on Vlasons Enterprises Corporation vs. Court of Appeals [155 SCRA 186 (1987).] is in order. Thus:
> The proceeding for the seizure of property in virtue of a search warrant does not end with the actual taking of

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> the property by the proper officers and its delivery, usually constructive, to the court. The order for the issuance of the warrant is not a final one and cannot constitute res judicata (Cruz vs. Dinglasan, 83 Phil. 333). Such an order does not ascertain and adjudicate the permanent status or character of the seized property. By its very nature, it is provisional, interlocutory (Marcelo vs. de Guzman, 114 SCRA 657). It is merely the first step in the process to determine the character and title of the property. That determination is done in the criminal action involving the crime or crimes in connection with which the search warrant was issued. Hence, such a criminal action should be prosecuted, or commenced if not yet instituted, and prosecuted. The outcome of the criminal action will dictate the disposition of the seized property.[2]

The appellate court further ruled that the affidavit of merits is not necessary for the order of preliminary attachment to issue considering that the petition itself is under oath:

> The denial was based on the ground that the application is not supported by an affidavit of the applicant corporation, through its authorized officer, who personally knows the facts.
>
> We cannot go along with respondent judge's theory. In Consul vs. Consul [17 SCRA 667 (1996)], the Supreme Court held:
> Affidavit of merits has a known purpose: Courts and parties should not require the machinery of justice to grind anew, if the prospects of a different conclusion cannot be reasonably reached should relief from judgment be granted. We look back at the facts here. The petition for relief is verified by petitioner himself. The merits of petitioner's case are apparent in the recitals of the petition. Said petition is under oath. That oath, we believe, elevates the petition to the same category as a separate affidavit. To require defendant to append an affidavit of merits to his verified petition, to the circumstances, is to compel him to do the unnecessary. Therefore, the defect pointed by the court below is one of forms, not of substance. Result: Absence of a separate affidavit is of de minimis importance.[3]

Upon motion by respondents, however, the Court of Appeals reversed itself. In its "Amendatory Decision," the appellate court held that there was no probable cause for the issuance of the search warrant. Accordingly, the evidence obtained by virtue of said warrant was inadmissible in the preliminary investigation.

> x x x Under Sections 168 and 170 of R.A. 8293 (the Intellectual Property Code), there is unfair competition if the alleged offender has given to his goods the general appearance of the goods of another manufacturer or dealer and sells or passes them off as goods of that manufacturer or dealer in order to deceive or defraud the general public or the legitimate trader. Also, if he makes false statements in the course of trade to discredit the goods, business, or services of another.
>
> Undisputedly, the seized goods from Sanly are genuine and not mere imitations. This is admitted by petitioners in their application for a search warrant and supporting affidavits, Annexes "A" to "D", inclusive, in their April 27, 1999 Submission of Annexes to this Court. It bears stressing that there is no showing or allegation that Sanly has presented, sold, or passed off its photographic paper as goods which come from Solid Triangle. There is no attempt on its part to deceive.
>
> Both Sanly and Solid Triangle sell genuine Mitsubishi products. Solid Triangle acquires its goods from Japan on the basis of its exclusive distributorship with Mitsubishi Corporation. While Sanly buys its goods from Hongkong, claiming it is a parallel importer, not an unfair competitor. As defined, a parallel importer is one which imports, distributes, and sells genuine products in the market, independently of an exclusive distributorship or agency agreement with the manufacturer. And, this is precisely what Sanly states as its commercial status.
>
> Records show that Sanly sold its photographic paper purchased from Hongkong without altering its appearance. It is distributed in the same Mitsubishi box with its logo and distinguishing marks as marketed in Japan. The same brown paper with the Mitsubishi seal is wrapped around its products. Copies of the importation documents and the certification on imports issued by the Philippine government recognized

> Societe' Generale' d' Surveillance (SGS) were appended to the motion to quash search warrant.
>
> Thus, on factual basis, the real dispute is actually between Solid Triangle and the manufacturer Mitsubishi. If Solid Triangle feels aggrieved, it should sue Mitsubishi for damages, if at all for breach of its distributorship. But that is between them.
>
> Certainly, there is here no probable cause to justify the issuance of a search warrant based on a criminal action for "unfair competition."
>
> Therefore, since there is no probable cause for unfair competition in this case, then the quashal of the search warrant by respondent Judge Bruselas is valid. This being the case, there is merit in the motion for reconsideration.
>
> In ascertaining the legality of a search warrant and the validity of the search and seizure conducted by the EIIB agents by virtue of the warrant, it is essential that a crime has been committed or is being committed and that the things seized are fruits of the crime or the means by which it is committed.
>
> The validity of a search and seizure is of constitutional dimensions. The right to privacy and the sanctity of a person's house, papers and effects against unreasonable searches and seizures are not only ancient. They are also zealously protected.
>
> x x x
>
> Solid Triangle contends that the quashal of the search warrant deprived it of its right to prove a prima facie case of unfair competition in the preliminary investigation. We initially agreed with it.
>
> While Solid Triangle has the right to present every single piece of evidence it can gather and muster, however, it has no right to prove its case through the use of illegally seized evidence secured in derogation of a constitutionally guaranteed right.
>
> The constitutional provision that any evidence obtained in violation of the provision against unreasonable searches and seizures "shall be inadmissible for any purpose in any proceeding" finds application here. The goods seized without probable cause are fruits of the poisonous tree and cannot be used for the purpose of proving unfair competition during preliminary investigation proceedings.
>
> The case of Vlasons Enterprises Corporation vs. Court of Appeals does not apply since it involved a different set of facts and issues.
>
> On the contrary, it is the case of People vs. Court of Appeals [216 SCRA 101 (1992)] that governs, where the Supreme Court ruled that with the quashal of the search warrant, the seized goods could not be used as evidence for any purpose, in any proceeding.[4]

As regards the preliminary attachment, the appellate court found that there was no ground for the issuance of the writ because:

> x x x Sanly does not deny that it sells Mitsubishi photographic color paper. But there is no showing that it attempts to depart from country, defraud Solid Triangle or the buying public, conceal or dispose of unjustly detained personal property, or commit any of the acts provided in Rule 57 of the 1997 Rules of Civil Procedure as grounds for the issuance of a writ of preliminary attachment.[5]

Petitioners moved for reconsideration but the same was denied by the Court of Appeals in its Resolution dated August 4, 2000.

In assailing the Amendatory Decision of the Court of Appeals, petitioners argue that:

> I.

> THE JUDGE WHO ISSUED A SEARCH WARRANT THAT HAS ALREADY BEEN IMPLEMENTED CANNOT QUASH THE WARRANT ANYMORE, AT LEAST WITHOUT WAITING FOR THE FINDINGS OF THE CITY PROSECUTOR WHO HAS THE EXCLUSIVE JURISDICTION TO DETERMINE PROBABLE CAUSE.
>
> II.
>
> IN THE PARALLEL IMPORTATION EFFECTED BY THE RESPONDENTS WITH DECEIT AND BAD FAITH, THERE EXISTS PROBABLE CAUSE THAT THE CRIME OF UNFAIR COMPETITION UNDER THE INTELLECTUAL PROPERTY CODE HAS BEEN COMMITTED BY THE RESPONDENTS.
>
> III.
>
> PETITIONERS' APPLICATION FOR A WRIT OF ATTACHMENT CANNOT BE DENIED ON THE GROUND THAT AN AFFIDAVIT OF MERITS IS NOT APPENDED TO THE COMPLAINT, AS THE COURT OF APPEALS HAS ALREADY RULED, AND ON THE GROUND THAT THERE IS NO JUSTIFICATION FOR IT BECAUSE THE QUESTIONS PERTINENT THERETO ARE NOT BEFORE THE COURT OF APPEALS BUT BEFORE THE TRIAL COURT.
>
> IV.
>
> PETITIONERS CANNOT BE HELD LIABLE FOR CONTEMPT IN NOT RETURNING THE GOODS SUBJECT OF THE SEARCH WARRANT NOTWITHSTANDING THE REFUSAL OF THE COURT OF APPEALS TO RULE ON THIS POINT FURTHER WHICH IS A GRIEVOUS ERROR TO THE PREJUDICE OF THE PETITIONERS.[6]

Petitioners contend that the Constitution does not authorize the judge to reverse himself and quash the warrant, "especially after goods had been seized pursuant to the search warrant, and the prosecution is poised to push forward with the goods as evidence."[7] In finding that doubt exists that a crime has been committed, it is argued that the judge "trench[ed] upon the prerogative and duty of the city prosecutor."[8]

The contention has no merit.

It is undisputed that only judges have the power to issue search warrants.[9] This function is exclusively judicial. Article III of the Constitution unequivocally states:

> Sec. 2. 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. [Emphasis supplied.]

Inherent in the courts' power to issue search warrants is the power to quash warrants already issued. In this connection, this Court has ruled that the motion to quash should be filed in the court that issued the warrant unless a criminal case has already been instituted in another court, in which case, the motion should be filed with the latter.[10] The ruling has since been incorporated in Rule 126 of the Revised Rules of Criminal Procedure:

> Sec. 14. Motion to quash a search warrant or to suppress evidence; where to file. - A motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted. If no criminal action has been instituted, the motion may be filed in and resolved by the court that issued the search warrant. However, if such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the latter court.

In the determination of probable cause, the court must necessarily resolve whether or not an offense exists to

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justify the issuance or quashal of the search warrant. Prior to the revision of December 1, 2000, Rule 126 of the Rules of Court provided:

> Sec. 3. Requisites for issuing search warrant. - A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined 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. [Emphasis supplied.][11]

Note that probable cause is defined as:

> xxx the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item(s), article(s) or object(s) sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.[12]

In Kenneth Roy Savage/K Angelin Export Trading vs. Taypin,[13] the Court was confronted with a search warrant that was issued purportedly in connection with unfair competition involving design patents. The Court held that the alleged crime is not punishable under Article 189 of the Revised Penal Code, and accordingly, quashed the search warrant issued for the non-existent crime.

> In the issuance of search warrants, the Rules of Court requires a finding of probable cause in connection with one specific offense to be determined personally by the judge after examination of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized. Hence, since there is no crime to speak of, the search warrant does not even begin to fulfill these stringent requirements and is therefore defective on its face. x x x.

A preliminary investigation, by definition, also requires a finding by the authorized officer of the commission of a crime. Previous to the 2000 revision, Section 1 of Rule 112 of the Rules of Court defined a preliminary investigation as "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court has been committed and the respondent is probably guilty thereof, and should be held for trial."[14]

> Section 2 of the same Rule enumerates who may conduct preliminary investigations:
>
> Sec. 2. Officers authorized to conduct preliminary investigations. - The following may conduct preliminary investigations:
>
> (a) Provincial or city fiscals and their assistants;
>
> (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;
>
> (c) National and Regional state prosecutors; and
>
> (d) Such other officers as may be authorized by law.
>
> Their authority to conduct preliminary investigations shall include all crimes cognizable by the proper court in their respective territorial jurisdictions.[15]

The determination of probable cause during a preliminary investigation has been described as an executive function.[16]

The proceedings for the issuance/quashal of a search warrant before a court on the one hand, and the preliminary investigation before an authorized officer on the other, are proceedings entirely independent of each other. One is not bound by the other's finding as regards the existence of a crime. The purpose of each proceeding differs from the other. The first is to determine whether a warrant should issue or be quashed, and the second, whether an

information should be filed in court.

When the court, in determining probable cause for issuing or quashing a search warrant, finds that no offense has been committed, it does not interfere with or encroach upon the proceedings in the preliminary investigation. The court does not oblige the investigating officer not to file an information for the court's ruling that no crime exists is only for purposes of issuing or quashing the warrant. This does not, as petitioners would like to believe, constitute a usurpation of the executive function. Indeed, to shirk from this duty would amount to an abdication of a constitutional obligation.

The effect of the quashal of the warrant on the ground that no offense has been committed is to render the evidence obtained by virtue of the warrant "inadmissible for any purpose in any proceeding," including the preliminary investigation. Article III of the Constitution provides:

> Sec. 3. (1) x x x.
>
> (2) Any evidence obtained in violation of this or the preceding section [Section 2] shall be inadmissible for any purpose in any proceeding.

It may be true that, as a result of the quashal of the warrant, the private complainant is deprived of vital evidence to establish his case, but such is the inevitable consequence.

Nevertheless, the inadmissibility of the evidence obtained through an illegal warrant does not necessarily render the preliminary investigation academic. The preliminary investigation and the filing of the information may still proceed if, because of other (admissible) evidence, there exists "sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The finding by the court that no crime exists does not preclude the authorized officer conducting the preliminary investigation from making his own determination that a crime has been committed and that probable cause exists for purposes of filing the information.

Petitioners also argue that Section 14, Rule 126 of the Revised Rules of Criminal Procedure, supra, while intended "to resolve conflicts of responsibility between courts," "does not expressly cover the situation where the criminal complaint is pending with the prosecutor." In such a case, petitioners submit, the public prosecutor should be allowed to resolve the question of whether or not probable cause exists.[17]

The Court finds this interpretation too contrived. Section 14, Rule 126 precisely covers situations like the one at bar. Section 14 expressly provides that a motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted. Under the same section, the court which issued the search warrant may be prevented from resolving a motion to quash or suppress evidence only when a criminal case is subsequently filed in another court, in which case, the motion is to be resolved by the latter court. It is therefore puerile to argue that the court that issued the warrant cannot entertain motions to suppress evidence while a preliminary investigation is ongoing. Such erroneous interpretation would place a person whose property has been seized by virtue of an invalid warrant without a remedy while the goods procured by virtue thereof are subject of a preliminary investigation.

We now turn to the question of whether the facts, as presented before the trial court, constitute an offense.

Private respondents are alleged to have committed unfair competition in violation of Section 168 of the Intellectual Property Code, which states:

> SEC. 168. Unfair Competition, Rights, Regulation and Remedies. - 168.1 A person who has identified in the mind of the public goods he manufactures or deals in, his business or services from those of others, whether or

> not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.
>
> 168.2 Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.
>
> 168.3 In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:
>
> (a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a lie purpose;
>
> (b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the service of another who has identified such services in the mind of the public; or
>
> (c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.
>
> 168.4 The remedies provided by Sections 156, 157 and 161 shall apply mutatis mutandis.

The same law, in Section 170, provides the penalty for violation of Section 168:

> SEC. 170. Penalties. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (50,000) to Two hundred thousand pesos (200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

Petitioners submit that "the importation of even genuine goods can constitute a crime under the Intellectual Property Code so long as fraud or deceit is present." The intent to deceive in this case, according to petitioners, is "patent" "from the following undisputed facts":

> (a) Before marketing its product, the respondents totally obliterated and erased the Emulsion Number and Type that was printed on the box/carton of the product because of which the source of the goods can no longer be traced.
>
> (b) Respondents even covered the boxes with newspapers to conceal true identity.
>
> (c) Being also engaged in the sale of photo equipments [sic] and having had the occasion of participating in the same exhibit with petitioner Solid Triangle several times already, respondents certainly knew that petitioner Solid Triangle is the sole and exclusive importer and distributor of Mitsubishi Photo Paper.
>
> (d) Two agents of the EIIB were also able to confirm from a salesgirl of respondents that substantial quantity of stocks of Mitsubishi Photo Paper are available at respondents' store and that the products are genuine, as they are duly authorized to sell and distribute it to interested customers.
>
> (e) No better proof of unfair competition is the seizure of the goods, 451 boxes of Mitsubishi photographic color paper.[18]

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Petitioners further expound:

> 47. We may categorize the acts of the respondents as "underground sales and marketing" of genuine goods, undermining the property rights of petitioner Solid Triangle. The Court of Appeals itself recognized the rights of a dealer. The acts of the respondents were made to appropriate unjustly the goodwill of petitioner Solid Triangle, and goodwill is protected by the law on unfair competition.
>
> 48. Petitioner Solid Triangle has established a trade or business in which it had acquired goodwill and reputation that will be protected, and so, to permit respondents to continue importing and distributing Mitsubishi Photo Paper, would be to countenance the unlawful appropriation of the benefit of a goodwill which petitioner Solid Triangle has acquired and permit the respondent to grab the reputation or goodwill of the business of another.
>
> 49. x x x petitioners have a valid cause to complain against respondents for the criminal violation of the Intellectual Property Law when the latter made it appear that they were duly authorized to sell or distribute Mitsubishi Photo Paper in the Philippines, when in truth and in fact they were not, and when they were hiding their importation from the petitioners by such acts as removing the Emulsion Number and Type and covering the boxes with old newspapers.[19]

We disagree with petitioners and find that the evidence presented before the trial court does not prove unfair competition under Section 168 of the Intellectual Property Code. Sanly Corporation did not pass off the subject goods as that of another. Indeed, it admits that the goods are genuine Mitsubishi photographic paper, which it purchased from a supplier in Hong Kong.[20] Petitioners also allege that private respondents "made it appear that they were duly authorized to sell or distribute Mitsubishi Photo Paper in the Philippines." Assuming that this act constitutes a crime, there is no proof to establish such an allegation.

We agree with petitioners, however, that the Court of Appeals went beyond the issues when it ruled that there were no grounds for the issuance of an order of preliminary attachment. The only issue raised with respect to the preliminary attachment was whether the application for the writ should have been denied because the same was not supported by an affidavit of the applicant corporation, through its authorized officer, who personally knows the facts. Whether there are sufficient grounds to justify the order is a matter best left to the trial court, which apparently has yet to hear the matter. Thus, we sustain the Court of Appeals' original decision holding that an affidavit of merit is not necessary since the petition is verified by an authorized officer who personally knows the facts.

Similarly premature is whether petitioners' failure to return the goods to respondents constituted indirect contempt. The assailed order dated April 20, 1999 was a "show cause" order. Before any hearing on the order could be held, petitioners promptly filed a petition for certiorari. Clearly, the trial court had yet to rule on the matter, and for this Court now to hold petitioners' act contemptuous would preempt said court.

WHEREFORE, the petition is GRANTED IN PART. The Amendatory Decision of the Court of Appeals dated March 31, 2000, as well as its Resolution dated August 4, 2000, is AFFIRMED insofar as it holds that (1) the Quezon City Regional Trial Court, Branch 93, has the power to determine the existence of a crime in quashing a search warrant and, (2) the evidence does not support a finding that the crime of unfair competition has been committed by respondents; and REVERSED insofar as it holds that (1) there are no grounds to warrant the issuance of a writ of preliminary attachment and (2) petitioners are guilty of contempt. The case is remanded for further proceedings to the courts of origin, namely, Branch 91 of RTC, Quezon City for resolution of the application for a writ of attachment, and Branch 93 of the same court for resolution of the application to cite petitioners for contempt.

Petitioners are ordered to return to respondent Sanly Corporation the 451 boxes of Mitsubishi photographic color paper seized by virtue of Search Warrant No. 3324 (99) issued by the Quezon City Regional Trial Court, Branch 93.

SO ORDERED.

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

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[1] Rollo, pp. 58-61.

[2] Id., at 61-63.

[3] Id., at 63-64. Underscoring by the Court of Appeals.

[4] Id., at 74-79. Underscoring in the original.

[5] Id., at 80.

[6] Id., at 29-30.

[7] Id., at 20.

[8] Id., at 33.

[9] Salazar vs. Achacoso, 183 SCRA 145 (1990).

[10] People vs. Court of Appeals, 291 SCRA 400 (1998).

[11] Presently Section 4, Rule 126 of the Revised Rules of Criminal Procedure, which now reads:

> Sec. 4. Requisites for issuing search warrant. - A search warrant shall not issue except 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 which may be anywhere in the Philippines.

[12] People vs. Aruta, 288 SCRA 262 (1998).

[13] 331 SCRA 697 (2000).

[14] The phrase "cognizable by the Regional Trial Court" has been omitted in Section 1, Rule 112 of the Revised Rules of Criminal Procedure.

[15] Under the Revised Rules, this provision now reads:

> Sec. 2. Officers authorized to conduct preliminary investigations. - The following may conduct preliminary investigations:
>
> (a) Provincial or City Prosecutors and their assistants;
> (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;
> (c) National and Regional State Prosecutors; and
> (d) Other officers as may be authorized by law.
>
> Their authority to conduct preliminary investigations shall include all crimes cognizable by the proper court in their respective territorial jurisdictions.

[16] People vs. Court of Appeals, supra.

[17] Id., at 303-304.

[18] Id., at 43-44.

[19] Id., at 44-45. Underscoring in the original.

[20] Rollo, p. 123.

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