FREDRIK FELIX P. NOGALES, GIANCARLO P. NOGALES, ROGELIO P. NOGALES, MELINDA P. NOGALES, PRISCILA B. CABRERA, PHIL-PACIFIC OUTSOURCING SERVICES CORPORATION AND 3 X 8 INTERNET, RE...

G.R. No. 191080. November 21, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

At bench is a petition for certiorari under Rule 65 of the Rules of Court filed by petitioners Fredrik Felix P. Nogales, Giancarlo P. Nogales, Rogelio P. Nogales, Melinda P. Nogales, Priscila B. Cabrera, Phil-Pacific Outsourcing Services Corp. and 3 x 8 Internet, represented by its proprietor Michael Christopher A. Nogales (petitioners) against respondents People of the Philippines and Presiding Judge Tita Bughao Alisuag (Judge Alisuag) of Branch 1, Regional Trial Court, Manila (RTC).

The petition challenges the August 19, 2009 Decision[1] of the Court of Appeals (CA), in CA-G.R. SP No. 105968, which affirmed with modification the August 6, 2008 Order[2] of Judge Alisuag of the RTC; and its January 25, 2010 Resolution,[3] which denied petitioners' motion for reconsideration.

THE FACTS:

On July 30, 2007, Special Investigator Garry Meñez (SI Meñez) of the National Bureau of Investigation (NBI) applied for a search warrant before the RTC to authorize him and his fellow NBI agents or any peace officer to search the premises of petitioner Phil-Pacific Outsourcing Services Corporation (Phil-Pacific) and to seize/confiscate and take into custody the items/articles/objects enumerated in his application. The sworn application, docketed as Search Warrant Proceedings No. 07-11685,[4] partially reads:

> SWORN APPLICATION FOR A SEARCH WARRANT
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> x x x x x x x x x
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> That he has been informed, verily believes and personally verified that JUN NICOLAS, LOREN NUESTRA, FREDRICK FELIX P. NOGALES, MELINDA P. NOGALES, PRISCILA B. CABRERA and/or occupants PHIL-PACIFIC OUTSOURCING SERVICES CORP. located at Mezzanine Flr., Glorietta De Manila Building, 776 San Sebastian St., University Belt, Manila have in their possession/control and are concealed in the above-mentioned premises various material[s] used in the creation and selling of pornographic internet website, to wit:
>
> - Computer Sets
>
> - Television Sets
>
> - Internet Servers

- Fax Machines

- Pornographic Films and other Pornographic Materials

- Web Cameras

- Telephone Sets

- Photocopying Machines

- List of clients and

- Other tools and materials used or intended to be used in the commission of the crime.

The application for Search Warrant No. 07-11685 of SI Meñez was acted upon by Judge Alisuag. On August 3, 2007, a hearing was conducted wherein Judge Alisuag personally examined SI Meñez and two other witnesses in the form of searching questions and their answers thereto were duly recorded by the court. The witnesses' affidavits were also submitted and marked as supporting evidence to the application for the issuance of a search warrant. On the same date of the hearing, the application was granted and the corresponding Search Warrant,[5] issued. The said search warrant is quoted as follows:

SEARCH WARRANT

TO: ANY PEACE OFFICER

It appearing to the satisfaction of the undersigned, after examining under oath applicant SI III GARY I. MEÑEZ of the Special Task Force Division, National Bureau of Investigation, and his witnesses, ISABEL CORTEZ y ANDRADE of 167 5th Avenue, Caloocan City and MARK ANTHONY C. SEBASTIAN of No. 32 Arlegui Street, San Miguel Quiapo, Manila that there are good reasons to believe that VIOLATION OF ARTICLE 201 OF THE REVISED PENAL CODE, AS AMENDED IN RELATION TO R.A. 8792 (ELECTRONIC COMMERCE ACT) has been committed and that JUN NICOLAS, LOREN NUESTRA, FREDERICK (sic) FELIX P. NOGALES, GIAN CARLO P. NOGALES, ROGELIO P. NOGALES, MELINDA P. NOGALES, PRISCILA B. CABRERA and/or OCCUPANTS OF PHIL. PACIFIC OUTSOURCING SERVICES CORPORATION located at Mezzanine Floor, Glorietta De Manila Building, 776 San Sebastian St., University Belt, Manila, have in their possession and control of the following:

- Computer Sets

- Television Sets

- Internet Servers

- Fax Machines

- Pornographic Films and other Pornographic Materials

- Web Cameras

- Telephone Sets

- Photocopying Machines

- List of clients and

- Other tools and materials used or intended to be used in the commission of the crime.

You are hereby commanded to make an immediate search any time of the DAY of the premises mentioned above which is Mezzanine Floor, Glorietta De Manila Building, 776 San Sebastian St., University Belt, Manila

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and take possession of the following:

- Computer Sets

- Television Sets

- Internet Servers

- Fax Machines

- Pornographic Films and other Pornographic Materials

- Web Cameras

- Telephone Sets

- Photocopying Machines

- List of clients and

- Other tools and materials used or intended to be used in the commission of the crime.

and bring to this Court the said properties and persons to be dealt with as the law may direct. You are further directed to submit a return within ten (10) days from today.

On August 8, 2007, SI Meñez submitted a Return of Search Warrant[6] to the RTC manifesting that in the morning of August 7, 2007, the operatives of the Special Task Force of the NBI implemented the said search warrant in an orderly and peaceful manner in the presence of the occupants of the described premises and that the seized items were properly inventoried in the Receipt/Inventory of Property Seized. The items seized were the following:

1. Ten (10) units of Central Processing Units (CPUs);
2. Ten (10) units of monitors;
3. Ten (10) units of keyboard;
4. Ten (10) units of mouse; and
5. Ten (10) units of AVRs.

The RTC then issued an order granting the prayer of SI Meñez to keep the seized items in the NBI evidence room and under his custody with the undertaking to make said confiscated items available whenever the court would require them.

Aggrieved by the issuance of the said order, the named persons in the search warrant filed a Motion to Quash Search Warrant and Return Seized Properties.[7] In the said motion, petitioners cited the following grounds:

A. Respondents do not have programmers making, designing, maintaining, editing, storing, circulating, distributing, or selling said websites or the contents thereof;

B. Respondents do not have any website servers;

C. Respondents do not own the websites imputed to them, which are actually located outside the Philippines, in foreign countries, and are owned by foreign companies in those countries;

D. The testimony of the witnesses presented by the NBI are contradicted by the facts of the case as established by documentary evidence;

E. The NBI withheld verifiable information from the Honorable Court and took advantage of the limited knowledge of courts in general in order to obtain the search warrant for their personal intentions;

F. The NBI raided the wrong establishment; and

G. The element of publicity is absent.

On December 26, 2007, the RTC denied the motion[8] stating, among others, that:

1.) It cannot be said that publicity is not present. The Phil-Pacific Outsourcing Services Corp., is actually persuading its clients, thru its agents (call center agents), to log-on to the pornographic sites listed in its web page. In that manner, Phil-Pacific Outsourcing Services Corporation is advertising these pornographic web sites, and such advertisement is a form of publicity.

2.) Even if some of the listed items intended to be seized were not recovered from the place where the search was made, it does not mean that there was no really crime being committed. As in fact, pornographic materials were found in some of the computers which were seized.

3.) In the same way that the names listed in the Search Warrant were not arrested or not in the premises subject of the search, it does not mean that there are no such persons existing nor there is no crime being committed.

4.) As a rule, Search Warrant may be issued upon existence of probable cause. "Probable cause for a search is defined as such fact and circumstances which would lead a reasonable 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 reached." Hence, in implementing a Search Warrant, what matters most is the presence of the items ought to be seized in the place to be searched, even in the absence of the authors of the crime committed.

5.) The Search Warrant was issued in accordance with Secs. 3 to 6, Rule 126 of the Revised Rules of Court. Search Warrant may be quashed or invalidated if there is an impropriety in its issuance or irregularity in its enforcement. Absent such impropriety or irregularity, quashal is not warranted.

Undaunted, petitioners moved for the reconsideration of the said order on the following grounds: (a) the trial court erred in holding that there was no impropriety or irregularity in the issuance of the search warrant; (b) the trial court erred in holding that there was no irregularity in its enforcement; and (c) the trial court erred in holding that publicity was present.

On February 19, 2008, petitioners requested the RTC to issue a subpoena duces tecum ad testificandum to SI Meñez and the witnesses Isabel Cortez and Mark Anthony Sebastian directing them to appear, bring the records evidencing publicity of pornographic materials and testify in the hearing set on March 7, 2008.

Meanwhile, in a resolution dated February 21, 2008,[9] the 3rd Assistant City Prosecutor recommended that the complaint for violation of Article 201[10] of the Revised Penal Code (RPC) against petitioners be dismissed due to insufficiency of evidence and the same was approved by the City Prosecutor. Hence, on May 6, 2008, petitioners filed a Supplemental Motion to Release Seized Properties[11] manifesting that the complaint against them was dismissed, and that, for said reason, the State had no more use of the seized properties.

On August 6, 2008, the RTC issued the assailed second order,[12] which denied the motion for reconsideration filed by petitioners. The RTC, however, partially granted the prayer of petitioners. Judge Alisuag wrote:

Be it noted that the proceedings held by this Court when it heard the Application for Search Warrant by NBI Special Investigator Meñez is very much different [from] the case resolved by the Office of the City Prosecutor. The case before the Office of the City Prosecutor, while the same [was] dismissed cannot be the ground to release the seized properties subject of the Search Warrant issued by the Court. When the Court issued the Search Warrant, indeed, it found probable cause in the issuance of the same, which is the only reason wherein Search Warrant may be issued.

On the case heard by the Office of the City Prosecutor, the Resolution has its own ground and reason to

> dismiss it.
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> x x x x x x x x x
>
> That the subject of the Search Warrant which is now under the custody of the NBI [was] made subject of the case and as well as the witnesses for that case which was resolved by the Office of the City Prosecutor is of no moment.
>
> WHEREFORE, the Motion for Reconsideration is Denied.
>
> The Motion to Release Seized Properties is partially granted.
>
> Accordingly therefore, let the computer sets be hereby returned to the respondents. The CPU and all the rest of the softwares containing obscene materials which were seized during the implementation of the valid Search Warrant are hereby retained in the possession of the National Bureau of Investigation thru applicant Special Investigator Garry J. Meñez.
>
> SO ORDERED.[13]

Not in conformity, petitioners sought relief with the CA via a special civil action for certiorari alleging that Judge Alisuag committed grave abuse of discretion amounting to lack or excess of jurisdiction when she partially granted the motion of petitioners for the release of the seized properties such that only the monitor sets were released but the CPUs and the softwares were retained under the custody of the NBI.

The CA affirmed with modification the assailed August 6, 2008 Order of the RTC. Thus:

> WHEREFORE, in view of all the foregoing premises, the assailed order issued by the respondent Judge on August 6, 2008 is AFFIRMED with the MODIFICATION that the CPUs and softwares which were ordered to be retained by the NBI through SI Meñez shall be released in favor of the petitioners herein with the condition that the hard disk be removed from the CPUs and be destroyed. If the softwares are determined to be unlicensed or pirated copies, they shall be destroyed in the manner allowed by law.
>
> SO ORDERED.[14] [Underscoring supplied]

The CA explained:

> 1.) It is undisputed that the seized computer units contained obscene materials or pornographic files. The hard disk technically contains them but these files are susceptible to modification or limitation of status; thus, they can be erased or permanently deleted from the storage disk. In this peculiar case, the obscene materials or pornographic files are stored in such a way that they can be erased or deleted by formatting the hard disk without the necessity of destroying or burning the disk that contains them. By structure, the hard drive contains the hard disk and the hard drive can be found in the CPU. These obscene materials or pornographic files are only stored files of the CPU and do not permanently form part of the CPU which would call for the destruction or much less retention of the same.
>
> 2.) Notwithstanding, with the advancement of technology, there are means developed to retrieve files from a formatted hard disk, thus, the removal of the hard disk from the CPU is the reliable manner to permanently remove the obscene or pornographic files. With regard to the softwares confiscated and also ordered to be retained by the NBI, nothing in the evidence presented by the respondents shows that these softwares are pornographic tools or program customized just for creating obscene materials. There are softwares which may be used for licit activities like photograph enhancing or video editing and there are thousands of softwares that have legitimate uses. It would be different if the confiscated softwares are pirated softwares contained in compact discs or the pre-installed softwares have no license or not registered; then, the NBI may retain them. In the particular circumstances of this case, the return of the CPUs and softwares would better serve the purposes of justice and expediency.

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> 3.) The responsibilities of the magistrate do not end with the granting of the warrant but extend to the custody of the articles seized. In exercising custody over these articles, the property rights of the owner should be balanced with the social need to preserve evidence which will be used in the prosecution of a case. In the instant case, the complaint had been dismissed by the prosecutor for insufficiency of evidence. Thus, the court had been left with the custody of highly depreciable merchandise. More importantly, these highly depreciable articles would have been superfluous to be retained for the following reasons: (1) it was found by the prosecutor that there was no sufficient evidence to prove that the petitioners violated Article 201 of the Revised Penal Code in relation to R.A. 8792 (Electronic Commerce Act); (2) the obscene materials or pornographic files can be deleted by formatting or removing the hard disk from the CPUs without destroying the entire CPU; and (3) the petitioners did not dispute that the files found in the seized items were obscene or pornographic but the said devices are not obscene or illegal per se. Hence, where the purpose of presenting as evidence the articles seized is no longer served, there is no justification for severely curtailing the rights of a person to his property.

Petitioners filed a motion for reconsideration but it was denied in a resolution dated January 25, 2010.[15]

Undeterred, petitioners filed a petition for certiorari[16] with this Court anchored on the following:

> GROUNDS:
> 6.1. The decision by the Court of Appeals affirming the decision of the respondent trial judge constitutes grave abuse of discretion amounting to lack or excess of jurisdiction, as it violates the constitutional proscription against confiscation of property without due process of law, and there is no appeal nor any plain, speedy or adequate remedy in the ordinary course of law.
>
> 6.2. Since the case involves pornography accessible in the internet, this is a case of first impression and current importance.[17] [Emphases ours]

ISSUE

Whether or not there was grave abuse of discretion on the part of the CA in ordering the removal and destruction of the hard disks containing the pornographic and obscene materials.

THE COURT'S RULING

Petitioners argue that there is no evidence showing that they were the source of pornographic printouts presented by the NBI to the RTC or to the City Prosecutor of Manila in I.S. No. 07H-13530. Since the hard disks in their computers are not illegal per se unlike shabu, opium, counterfeit money, or pornographic magazines, said merchandise are lawful as they are being used in the ordinary course of business, the destruction of which would violate not only procedural, but substantive due process. [18]

The argument of petitioners is totally misplaced considering the undisputed fact that the seized computer units contained obscene materials or pornographic files. Had it been otherwise, then, petitioners' argument would have been meritorious as there could be no basis for destroying the hard disks of petitioners' computer units.

While it may be true that the criminal case for violation of Article 201 of the Revised Penal Code was dismissed as there was no concrete and strong evidence pointing to them as the direct source of the subject pornographic materials, it cannot be used as basis to recover the confiscated hard disks. At the risk of being repetitious, it appears undisputed that the seized computer units belonging to them contained obscene materials or pornographic files. Clearly, petitioners had no legitimate expectation of protection of their supposed property rights.

The CA is correct in stating that the removal of the hard disk from the CPU is a reliable way of permanently removing the obscene or pornographic files. Significantly, Presidential Decree (PD) No. 969 is explicit. Thus:

> Sec. 2. Disposition of the Prohibited Articles. The disposition of the literature, films, prints, engravings, sculptures, paintings, or other materials involved in the violation referred to in Section 1 hereof shall be governed by the following rules:
>
> a. Upon conviction of the offender, to be forfeited in favor of the government to be destroyed.
>
> b. Where the criminal case against any violator of this decree results in an acquittal, the obscene/immoral literature, films, prints, engravings, sculpture, paintings or other materials and other articles involved in the violation referred to in Section 1 hereof shall nevertheless be forfeited in favor of the government to be destroyed, after forfeiture proceedings conducted by the Chief of Constabulary. [Emphasis and underscoring supplied]

Clearly, the provision directs the forfeiture of all materials involved in violation of the subject law. The CA was lenient with petitioners in modifying the ruling of the RTC in that the CPUs and softwares, which were initially ordered to be retained by the NBI, should be released in their favor with only the hard disk removed from the CPUs and destroyed. If the softwares are determined to be violative of Article 201 of the RPC, unlicensed or pirated, they should also be forfeited and destroyed in the manner allowed by law. The law is clear. Only licensed softwares that can be used for legitimate purposes should be returned to petitioners.

To stress, P.D. No. 969 mandates the forfeiture and destruction of pornographic materials involved in the violation of Article 201 of the Revised Penal Code, even if the accused was acquitted.

Taking into account all the circumstances of this case, the Court holds that the destruction of the hard disks and the softwares used in any way in the violation of the subject law addresses the purpose of minimizing if not totally eradicating pornography. This will serve as a lesson for those engaged in any way in the proliferation of pornography or obscenity in this country. The Court is not unmindful of the concerns of petitioners but their supposed property rights must be balanced with the welfare of the public in general.

WHEREFORE, the petition is DENIED. The August 19, 2009 Court of Appeals Decision is AFFIRMED WITH MODIFICATION in that only the CPUs and those softwares determined to be licensed and used for legitimate purposes shall be returned in favor of the petitioners. The hard disk drives containing the pornographic materials and the softwares used in any way in violation of Article 201 of the Revised Penal Code, unlicensed or pirated shall be forfeited in favor of the Government and destroyed.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perez,[*] JJ., concur.

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[*] Designated as additional member of the Third Division in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152 dated November 11, 2011.

[1] Rollo, 50-63. Penned by Associate Justice Isaias Dicdican, with Associate Justice Pampio A. Abarintos and Associate Justice Romeo F. Barza, concurring.

[2] Id. at 150-152.

[3] Id.at 24-25

[4] Id. at 84-85.

[5] Id. at 86-88.

[6] Id. at 88-89.

[7] Id. at 90-123.

[8] Id. at 125-128.

[9] Id. at 143-144.

[10] Art. 201. Immoral Doctrines, obscene publications and exhibitions, and indecent shows. – The penalty of prision mayor or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

> 1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;
>
> 2. (a) The authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;
>
> (b) Those who, in the theatres, fairs, cinematographs, or any other place, exhibit indecent or immoral plays, scenes, acts or shows, it being understood that the obscene literature or indecent or immoral plays, scenes, acts, or shows, whether live or in film, which are prescribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts.
>
> 3. Those who shall sell, give away or exhibit films, prints, engravings, sculptures or literature which are offensive to morals.

[11] Rollo, pp. 145-146.

[12] Id. at 150-152.

[13] Id. at 151-152.

[14] Id. at 22.

[15] Id. at 24-25.

[16] Id. at 27-49.

[17] Id. at 44.

[18] Id. at 44-45.

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