

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SANTIAGO SY JUCO, DEFENDANT. TEOPISTO B. REMO, PETITIONER
AND APPELLANT.**

G. R. No. 41957. August 28, 1937

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DIAZ, J.:

Upon petition of the agent and representative of the Bureau of Internal Revenue, named Narciso Mendiola, who alleged that, according to information given him by a person whom he considered reliable, certain fraudulent books, letters and papers or records were being kept in the building marked No. 482 on Juan Luna Street, Binondo, Manila, occupied by Santiago Sy Juco, a warrant to search the building in question was issued against said person on March 7, 1933, by the Court of First Instance of Manila, through Judge Mariano A. Albert. In said warrant, the peace officers to whom it was directed for execution were required to seize the above-stated articles for the purpose of delivering them to the court, for the proper action to be taken in due time. After making the required search, the officers concerned seized, among things, an art metal filing cabinet claimed by Attorney Teopisto B. Remo to be his and to contain some letters, documents and papers belonging to his clients. Inasmuch as said officers later refused to return the filing cabinet in question to him, he filed a petition in the Court of First Instance of Manila, praying that the Collector of Internal Revenue and his agents be prohibited from opening said art metal filing cabinet and that the sheriff of the City of Manila likewise be ordered to take charge of said property in the meantime, on the ground that the warrant by virtue of which the search was made is null and void, being illegal and against the Constitution. (A similar petition was later filed in the same case by the Salakam Lumber Co., Inc., the same agents of the Bureau of Internal Revenue having also seized some books belonging to it by virtue of the above-mentioned search warrant.

After due hearing, the Court of First Instance through Judge Delfin Jaranilla, decided to overrule both petitions, declaring that the art metal filing cabinet and the books and papers claimed by the Salakam Lumber Co., Inc., would be returned to Attorney Teopisto B. Remo and to the company, respectively, as soon as it be proven, by means of an examination thereof to be made in the presence of the interested parties, that they contain nothing showing that they have been used to commit fraud against the Government. Only Attorney Teopisto B. Remo appealed from the decision of the court and he now contends that it committed the nine errors assigned by him as follows:

"1. The lower court erred in not holding that the search warrant, Exhibit B, issued in the case at bar is unconstitutional and void ab initio and hence can confer no legal right upon the Government to seize, much less to retain or open the filing1 cabinet in question, Exhibit 3.

"2. The lower court erred in not holding that a search warrant which is void ab initio may not be legalized by evidence secured subsequent to the issuance, or in consequence, of said illegal search warrant.

"3. The lower court erred in not holding that the doctrine of the case of *People vs. Rubio* (G. R. No. 35500, 57 Phil., 384), is not applicable to the case at bar.

"4. The lower court erred in not holding that the search warrant, Exhibit B, was procured in order to obtain evidence against the defendant Santiago Sy Juco.

"5. The lower court erred in not holding that the search warrant, Exhibit B, was issued solely against the premises occupied by the defendant Santiago Sy Juco, and hence cannot be used against the premises occupied by a stranger, or the petitioner, Teopisto B. Remo.

"6. The lower court erred in not holding that the filing cabinet, Exhibit 3, is the personal property of the petitioner, Teopisto B. Remo, and not of the defendant Santiago Sy Juco.

"7. The lower court erred in not upholding the inviolability of the contents of the filing cabinet, Exhibit 3, the same being confidential documents entrusted to the herein petitioner, Attorney Teopisto B. Remo, by his clients, in his professional capacity and in connection with cases: pending before the courts of justice and administrative tribunals.

"8. The lower court erred in not holding that the Internal Revenue agents have infringed the penal laws not only by procuring the search warrant, Exhibit B, against the premises of the defendant, Santiago Sy Juco, without just cause, but also by exceeding their authority in enforcing said search warrant against the premises of the petitioner, Teopisto B. Remo, who is a stranger to said search warrant, which acts also constitute a violation of the domicile of said petitioner; and in not endorsing the matter to the city fiscal for proper action.

"9. The lower court erred in not ordering the return of the filing cabinet, Exhibit 3, intact and unopened, to its lawful owner, the petitioner Teopisto B. Remo."

The pertinent part of the search warrant in question was couched in the following language:

"Proof by affidavit having this day been made before me, Mariano Albert, Judge of the Court of First Instance of the City of Manila, Philippine Islands, by the complainant on oath of Narciso Mendiola, special investigator, Bureau of Internal Revenue, Manila, that the defendant, Santiago Sy Juco, of No. 482 Juan Luna, Manila, keeps illegally and feloniously fraudulent books, correspondence, and records and that he verily believes upon probable 'cause that the said books, correspondence and records at No. 482 Juan Luna, Manila, and the said (personal) property is now being used in the commission of fraud of the revenue of the Government.

"You are therefore commanded to take with you the necessary and proper assistance and to enter, in the daytime, into the said premises and there diligently search for fraudulent books, correspondence and records and that you seize and bring them before the court to be disposed of according to law.

"Given under my hands this 7th day of March, 1933, in the City of Manila.

[SEAL]

(Sgd.)

"MARIANO A. ALBERT

"Judge of Court of First Instance of Manila"

The affidavit or deposition referred to in the warrant above-quoted contained the following questions and answers:

"TESTIMONY TAKEN BEFORE HON. JUDGE MARIANO A. Albert, Narciso Mendiola, being duly sworn, testifies as follows:

"Q.

What is your name, residence and occupation?

—

A.

Narciso Mendiola, special investigator, Bureau of Internal Revenue, Manila.

"Q.

Are you the applicant for this search warrant?

—

A.

Yes, sir.

"Q.

Do you know the premises situated at No. 482 Juan Luna, Manila?

—

A.

Yes, sir.

"Q.

Do you know who occupy said premises?

—

A.

According to the best of my information, the house is occupied by Santiago Sy Juco.

"Q.

What are your reasons for applying for the search warrant?

—

A.

It has been reported to us by a person whom I considered reliable that in said premises are fraudulent books, correspondence and records.

"I, Narciso Mendiola, being duly sworn, depose and say that I have read the foregoing questions and answers and that I found the same to be correct and true to the best of my knowledge and belief.

(Sgd.)

"NARCISO MENDIOLA

"Subscribed and sworn to before me this 7th day of March, 1933, in the City of Manila, P. I.

[SEAL]

(Sgd.)

"MARIANO A. ALBERT

"Judge of Court of First Instance of Manila"

It appears clear to this court that the questions that the appellant wishes to raise by means of the alleged errors attributed by him to the lower court, may be reduced to the following:

- Is the search warrant in question valid or not, taking into consideration the provisions of the law and of the Constitution relative thereto?
- Does the art metal filing cabinet seized by the agents of the Bureau of Internal Revenue belong to Santiago Sy Juco or to Teopisto B. Remo?
- Could the search warrant in question affect Attorney Teopisto B. Remo, not being the person against whom it was directed?
- Had the court authority to order the opening of the cabinet in question for the purpose of determining, by an examination of the books, documents and records contained therein, whether or not the same were used to commit fraud against the Government?
- A question which is very similar to the first one herein raised by the appellant, has been decided by this court in the negative in its judgment rendered in the case of Alvarez vs. Court of First Instance of Tayabas and AntiUsury Board, p. 33, ante). According to -our laws in force on the date in question, which do not differ substantially from the provisions of the Constitution of the Commonwealth in matters regarding search, in order that a search warrant may be valid, the following requisites, among others, must be present: that the application upon which it is issued be supported by oath; that the search warrant particularly describes not only the place to be searched but also the person or thing to be seized, and that there be probable cause (sec. 97, General Orders, No. 58; sec. 3, Jones Law; Article III, sec. 1, paragraph 3, Constitution of the Commonwealth).

In the above-cited case of Alvarez vs. Court of First Instance of Tayabas and Anti-Usury Board, supra, and in that of United States vs. Addison (28 Phil., 566), this court held that the oath required must be such that it constitutes a guaranty that the person taking it has personal knowledge of the facts of the case and that it convinces the committing magistrate, not the individual seeking the issuance of the warrant or the person making the averment by hearsay; of the existence of the requisite of probable cause. It has likewise been held by this court that by probable cause are meant such facts and circumstances antecedent to the issuance of the warrant, that are in themselves sufficient to induce a cautious man to rely upon them and act in pursuance thereof. It has furthermore been held that the true test of the sufficiency of an affidavit to warrant issuance of a search warrant is whether it has been drawn in such a manner that perjury could be charged thereon in case the allegations contained therein prove false (State vs. Roosevelt, 244 Pac., 280), and that the provisions of the Constitution and the statutes relative to searches and seizures must be construed liberally in favor of the individual who may be affected thereby, and strictly against the State and against the person invoking them for the issuance of the warrant ordering their execution (Elardo vs. State of Mississippi, 145 So., 615; Fowler vs. U. S., 62 Fed. [2d], 656;

Saforik vs. U. S. 1., 62 Fed. [2d], 892; Boyd vs. U. S., 116 U. S., 616; 29 Law. ed., 746), for the simple reason that the proceedings of search and seizure are, by their very nature, summary and drastic ones (Alvarez vs. Court of First Instance of Tayabas and Anti-Usury Board, *supra*, and the authorities cited therein).

By reading the affidavit which gave rise to the issuance of the search warrant in question, it will be seen that the latter does not fulfill the necessary conditions in support of its validity. In the first place, it is not stated in said affidavit that the books, documents or records referred to therein are being used or are intended to be used in the commission of fraud against the Government and, notwithstanding the lack of such allegation, the warrant avers that they are actually being used for such purpose. In the second place, it assumes that the entire building marked No. 482 on Juan Luna Street is occupied by Santiago Sy Juco against whom the warrant was exclusively issued, when the only ground upon which such assumption is based is Narciso Mendiola's statement which is mere hearsay and when in fact part thereof was occupied by the appellant. In the "third place, it was not asked that the things belonging to the appellant and to others also be searched. In other words, the warrant in question has gone beyond what had been applied for by Narciso Mendiola, and the agents who executed it performed acts not authorized by the warrant, and it is for this and the above-stated reasons why it is unreasonable, it being evident that the purpose thereof was solely to fish for evidence or search for it by exploration, in case some could be found. It is of common knowledge that search warrants have not been designed for such purpose (Gouled vs. U. S., 255 U. S., 298, S. C. R.; 65 Law. ed., 647; Uy Kheytyin vs. Villareal, 42 Phil., 886), much less in a case as the one under consideration where it has not even been alleged in the affidavit of Narciso Mendiola what crime had been committed by Santiago Sy Juco or what crime he was about to commit. On this point, said affidavit merely contained the following allegation: "It has been reported to us by a person whom I considered reliable that in said premises are fraudulent book, correspondence and records." Therefore, the first question raised should be decided in the negative.

- 2. The resolution of the second question depends entirely on the nature of the evidence presented and the relative preponderance thereof. The only witness who testified that the art metal filing cabinet belongs to the accused Santiago Sy Juco, is Macario Garcia. Against Garcia's testimony, we certainly have that of the appellant himself and his witnesses Rufino C. Wenceslao, Vicente del Rosario, Jose Jeuqueco and Feliciano Belmonte, besides Exhibits E, F, G, H and L, which conclusively proves that the furniture in question was purchased by said appellant at the beginning of January, 1933, and that he had it precisely in a room on one of the upper floors of building No. 482 on Juan Luna Street, which he was then subleasing from Santiago Sy Juco, to keep his records and those of his clients. On the other hand, it is unimportant now to determine whether the furniture in question belongs to Santiago Sy Juco or to the appellant Attorney Teopisto B. Remo. It should have been alleged by Narciso Mendiola that it belongs to Santiago Sy Juco, at the time he applied for the issuance of the search warrant, to show with the other allegations, reasons and evidence that the issuance thereof was justified because of the existence of probable cause, the latter being a requisite without which the issuance of the judicial warrant authorizing such search -would be unwarranted. For these reasons, this court concludes that the second question raised calls for an answer in the negative.

- After the considerations just made, the third question cannot be resolved except in the negative. The search warrant in question could not and should not in any way affect the appellant attorney on the ground that he is not the person against whom it had been sought. It is Santiago Sy Juco alone against whom the search warrant could be used, because it had been obtained precisely against him; so much so that Narciso Mendiola, who applied for it, mentioned him expressly in his affidavit and again did so in his report to his superior, that is, the Collector of Internal Revenue (Exhibit C); and at the trial of this case, it was insisted that there was necessity of making the search in the premises occupied by Santiago Sy Juco because an investigation was then pending against him, for having defrauded the Government in its public revenue. The doctrine laid down in the case of *People vs. Rubio*

(57 Phil., 384), invoked against the appellant, is not applicable to the case at bar because, unlike in the above-cited case, neither books nor records indicating fraud were found in his possession, and it is not he against whom the warrant was issued.

- It is clear that the court could not and can not order the opening of, the art metal filing cabinet in question because, it having been proven that it belongs to the appellant attorney and that in it he keeps the records and documents of his clients, to do so would be in violation of his rights as such attorney, since it would be tantamount to compelling him to disclose or divulge facts or things belonging to his clients, which should be kept secret, unless he is authorized by them to make such disclosure, it being a duty imposed by law upon an attorney to strictly preserve the secrets or communications made to him. Such an act would constitute a qualified violation of section 383, No. 4, and of section 31 of Act No. 190, which read as follows:

"An attorney can not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of client and his employer, concerning any fact, the knowledge of which has been acquired in such capacity." (Sec. 383, No. 4, Act No. 190.)

"A lawyer must strictly maintain inviolate the confidence and preserve the secrets of his client. He shall not be permitted in any court, without the consent of his client, given in open court, to testify to any facts imparted to him by his client in professional consultation, or for the purpose of obtaining advice upon legal matters." (Sec. 31, Act No. 190.)

For all the foregoing reasons, and finding that the errors assigned by the appellant are very well founded, the appealed judgment is reversed, and it is ordered that the art metal filing cabinet, together with the key thereof, seized by the internal revenue agents by virtue of the judicial warrant in question, which is hereby declared null and void, be immediately returned unopened to the appellant; and that a copy of this decision be sent to the Solicitor-General for him to take action, if he deems it justified, upon careful investigation of the facts, against the internal revenue agent or agents who obtained and executed¹ the warrant in question, in accordance with the provisions of article 129 of the Revised Penal Code, without special pronouncement as to costs. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, and Concepcion, JJ., concur.

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