

MARIANO MOLO, PETITIONER, VS. A. L. YATCO, COLLECTOR OF INTERNAL REVENUE, ANGEL S. GAMBOA AND JOSE V. CABRERA, RESPONDENTS.

G. R. No. 45237. October 28, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for mandamus filed by Mariano Molo against A. L. Yatco, Collector of Internal Revenue, Angel S. Gamboa and Jose V. Cabrera, praying, for the reasons alleged therein, for the issuance of a writ addressed to the above-named respondents ordering them to return and deliver the documents stated in the petition to the herein petitioner immediately, as well as any other orders which the court may deem just and equitable.

The pertinent facts necessary for the resolution of the legal question raised in this petition are as follows:

By virtue of a search warrant issued by the Court of First Instance of Rizal for an alleged violation of the Usury Law, the special agent of the Anti-Usury Board, Jose V. Cabrera, on June 15, 1935, seized a trunk containing various documents, note books, lists, contracts and other papers belonging to the petitioner Mariano Molo, issuing the corresponding receipt in favor of the latter (Exhibit A). After the necessary investigation, said board, not having found sufficient evidence to warrant the prosecution of said petitioner, dismissed the case. On November 16, 1935, the petitioner Mariano Molo wrote a letter to said board requesting the return of the documents seized by it, but, it having been discovered during the examination of the documents in question that the petitioner was engaged in the money lending business without the necessary privilege tax receipts required by sections 1453 and 1464 (x) of the Administrative Code, notice thereof was sent to the Collector of Internal Revenue who assigned one of his agents to examine the documents and papers in question. It was found during the examination that the petitioner had engaged in the money lending business in the years 1929, 1931, 1932 and 1934, without being provided with the necessary privilege tax receipts. In view of this the Collector of Internal Revenue imposed upon said petitioner a privilege tax in the sum of P350 corresponding to the first quarter of the year 1931, the first, second, third and last quarters of the year 1932, and the third quarter of the year 1934, which sum was paid under protest by the petitioner. In as much as the act committed by the petitioner constitutes, in the opinion of the Collector of Internal Revenue, a violation of section 2722, in connection with sections 1453 and 1464 (x) of the Administrative Code, which makes him amenable to criminal action, said Collector of Internal Revenue, availing himself of the authority conferred upon him by section 1582 of the Administrative Code, offered the petitioner the privilege of settling the case extra-judicially by payment of P10. As the petitioner had refused to make a compromise, said collector, in the exercise of the authority granted him by section 1434 of the Administrative Code, in connection with the Bookkeeping Law, Act No. 3292, and section 12 of Rules No. 58 of the Department of Finance, asked the chairman of the Anti-Usury Board to retain possession of the documents and papers seized by his office from the petitioner until the latter's case with the Bureau of Internal Revenue is finally settled.

In view of the above-stated facts the question arises whether or not the writ of mandamus herein applied for should be issued.

Section 515, in connection with section 222, of the Code of Civil Procedure, authorizes this court to "render a judgment granting a peremptory order against the defendant, commanding him, immediately after the receipt of such order, or at some other specified time, to do the act required to be done to protect the rights of the plaintiff who has been unlawfully excluded from the use and enjoyment of said rights."

According to section 95 of General Orders, No. 58, "a search warrant is an order in writing, issued in the name of the People of the Philippine Islands, signed by a judge or a justice of the peace, and directed to a peace officer, commanding him to search for personal property and bring it before the court," and the last part of the form of the search warrant prescribed in section 99 of said General Orders, No. 58 reads: "you are, therefore, commanded * * * to bring it forthwith before me * * * It is clear that, under the above-cited sections of General Orders, No. 58, the officer charged with the execution of a search warrant must make a return thereof to the court or judge who, issued it, delivering to said court the personal property seized under the warrant in question.

It appears from the present case that the documents and other papers belonging to the petitioner Mariano Molo, which were seized by a special agent of the Anti-Usury Board by virtue of a warrant issued by the Court of First Instance of Rizal, came into the possession of said board, and while it does not appear how said board came to have them in its possession, it is presumed that it was by virtue of an authority given by said court (sec. 334, No. 31, Act No. 190). By virtue of said authority the board became an agent of the Court of First Instance of Rizal in the custody of the documents in question, with the obligation to return them to said court upon the termination of the investigation for which the board needed them. As the Anti-Usury Board had found no sufficient evidence to warrant a criminal action against the petitioner for violation of the Usury Law, and as said board had dismissed the case under investigation, it was duty bound to return said documents and papers to the Court of First Instance of Rizal so that the latter might order the return thereof to their owner.

Although the Collector of Internal Revenue is authorized by section 1434 of the Administrative Code to make seizures for the violation of any penal law or regulation administered by the Bureau of Internal Revenue, inasmuch as the documents and papers in question are in the custody of the Court of First Instance of Rizal, through its agent the Anti-Usury Board; said Collector of Internal Revenue could not seize said documents and papers without authority of said court because it would amount to an undue interference by an administrative official in the affairs of a judicial official. Neither could the Anti-Usury Board keep said documents for itself because, being a mere agent of said court, it was not authorized by its principal to dispose of them.

Therefore, while the retention of the documents in question by the Anti-Usury Board, upon petition of the Collector of Internal Revenue, is illegal, it not being authorized by the Court of First Instance of Rizal in whose legal custody the documents in question are, neither the Collector of Internal Revenue nor the Anti-Usury Board can be ordered to return said documents to the petitioner on the ground that the one having the legal custody thereof is the Court of First Instance of Rizal which had ordered their seizure and which is the only one authorized by law to return them to their owner.

Wherefore, without prejudice to the right of the petitioner to ask the Court of First Instance of Rizal for the return of the documents in question, the petition for a writ of mandamus is denied and it is dismissed, without special pronouncement as to costs. So ordered.

Avanceila, C. J., and Diaz, J., concur.

CONCURRING
ABAD SANTOS, J.:

My views as to the law governing the issuance and use of search warrants have been set forth quite fully in my dissenting opinion in the case of *People vs. Rubio* (57 Phil., 384, 395). Applying the principles therein discussed to the case now under consideration, it seems clear that the petitioner's documents and papers were illegally seized, and he is therefore entitled to have the same returned to him. The principle announced and followed by the Supreme Court of the United States is that which declares as illegal searches and seizures, whether made with or without a search warrant, when the purpose of making search was solely to secure evidence to be used in a criminal or penal proceeding against the person in whose house or office the articles searched for and seized were found.

I, however, agree that the petition in this case must be denied, because mandamus is not the proper remedy. The rule is that mandamus will not ordinarily issue if the petitioner has another adequate remedy. As pointed out in the dissenting opinion of Justice Laurel, the petitioner could have resorted to any one of the various remedies suggested, the usual one being the filing of a motion in the court from which the warrant was issued for the return of the documents and papers illegally seized. In *Nicolas vs. Judge of First Instance of Ilocos Norte and Formantes* (42 Phil, 943), this court held that the writ of mandamus will not be issued where the petitioner has a complete remedy in the Court of First Instance by motion.

Much as I condemn the violation of constitutional rights, I see no compelling reason justifying a departure from the usual and orderly course of judicial proceedings in the present case.

DISSENTING

LAUREL, J.:

I dissent. In my opinion the remedy should be granted.

(1) According to section 515 of the Code of Civil Procedure, this court has concurrent jurisdiction with Courts of First Instance to issue writs of mandamus in all cases where an inferior tribunal, corporation, board or person unlawfully excludes the plaintiff from the use and enjoyment of a right to which he is entitled. Undoubtedly, every person, whether a citizen or an alien resident, is entitled to possess, use and enjoy his private papers which are, as Lord Camden has said in the celebrated case of *Entinck vs. Carrington* (19 How. St. Tr., 1029), among his dearest possessions. No person or body of persons or court, acting as a governmental organ and under the guise of law, by virtue of a search warrant, can deprive him of this right. (See *Vy Kheytn vs. Villareal*, 42 Phil., 886, 898; *Regidor vs. Araullo*, 5 Off. Gaz., 955, 961, 962; *U. S. vs. De los Reyes and Esguerra*, 20 Phil., 467.)

(2) Ordinarily, the practice is to file a timely and seasonable application in the form of a motion in the court which issued the search warrant asking for the determination of the legality or propriety of the search and seizure made and petitioning for the return of those papers and effects the fraudulent or illegal character of which have not been fully established (*People vs. Carlos*, 47 Phil., 626, 631; *Weeks vs. United States*, 232 U. S., 383; 58 Law. ed., 652; *Silverthorne Lumber Co. vs. United States*, 251 U. S., 385; 64 Law. ed., 319; *Wagner vs. Upshur*, 90 Md., 519). But this remedy is not exclusive. In the United States, various remedies are afforded. When the properties involved have been seized by virtue of a search warrant and are in the possession of an officer of the court or one acting under its order, and no action is pending, the application may be made by means of an independent summary proceeding (56 C. J., sec. 189, p. 1253). Libel on the seizure is usually brought (56 C. J., sec. 184, p. 1252, citing *In re Troy Pure Food Products Co.*, 14 F. [2d], 677) and replevin suits are allowed (*Duboff vs. Haslan*, 182 N. Y. S., 896, aff. 195 App. Div., 177; 186 N. Y. S., 481); and where property is seized under color of judicial process and brought under the control of the court, thus being placed beyond the reach of replevin or other independent or plenary remedy, a petition for the restoration of property unlawfully seized may be presented (56 C. J., sec. 185, p. 1252, citing *U. S. vs. McHie*, 194 Fed.,

894). The fact then, that one remedy is usually resorted to does not preclude recourse to other remedies; and I believe that, in meritorious cases, the extraordinary legal remedy of mandamus should be granted as this remedy is more speedy and adequate, being more or less summary in character.

(3) Under section 515 of the Code of Civil Procedure also, the remedy of mandamus may be availed of where the inferior court or judge thereof unlawfully neglects the performance of a duty specifically or specially enjoined by law. Under section 95 of the Code of Criminal Procedure, it is the duty of the officer serving the search warrant to deliver the things seized thereunder to the court whose duty it is, in turn, to deal with and dispose of the same in accordance with law. It is admitted that the Anti-Usury Board conducted an investigation of the papers seized and, finding no sufficient evidence, dismissed the case against the petitioner herein. The further retention of his papers, after the lapse of more than one year, without either the officer who served the warrant or the court which issued it taking any action with reference thereto, is nothing short of an infringement of the right to personal security and private property of the citizen.

(4) The unreasonable delay in returning the private papers of the petitioner has no explanation. The illegality of the retention having been shown, it becomes the duty of this court to grant the writ of mandamus prayed for and to command the respondents to return the papers to the petitioner without the necessity of resorting to the court of origin for an order to that effect.

Otherwise, the elaborate constitutional and statutory provisions which guaranty the sacred and indefeasible right of the people to be secure in their houses, papers and effects from the unjust encroachment of governmental power would be but an empty medley of words—without meaning, without purpose.. We should be ever vigilant in the protection and maintenance of basic individual rights.

IMPERIAL, J.:

I concur in the preceding dissenting opinion of Justice Laurel.

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