

**LEONA PASION VIUDA DE GARCIA, PETITIONER, VS. DIEGO LOCSIN,
JUDGE OF FIRST INSTANCE OF TARLAC, FELIX IMPERIAL,
PROVINCIAL FISCAL OF TARLAC, AND THE ANTI-USURY BOARD,
RESPONDENTS.**

G.R. No. 45950. June 20, 1938

Ponente: LAUREL, J.

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LAUREL, J.:

This is a petition for mandamus presented to secure the annulment of a search warrant and two orders of the respondent judge, and the restoration of certain documents alleged to have been illegally seized by an agent of the Anti-Usury Board.

It appears that on November 10, 1934, Mariano G. Almeda, an agent of the Anti-Usury Board, obtained from the justice of the peace of Tarlac, Tarlac, a search warrant (Exhibit B) commanding any officer of the law to search the person, house or store of the petitioner at Victoria, Tarlac, for "certain books, lists, chits, receipts, documents and other papers relating to her activities as usurer." The search warrant was issued upon an affidavit given by the said Almeda "that he has and there (is) just and probable cause to believe and he does believe that Leona Pasion de Garcia keeps and conceals in her house and store at Victoria, Tarlac, certain books, lists, chits, receipts, documents, and other papers relating to her activities as usurer, all of which is contrary to the statute in such cases made and provided." On the same date, the said Mariano G. Almeda, accompanied by a captain of the Philippine Constabulary, went to the office of the petitioner in Victoria, Tarlac and, after showing the search warrant to the petitioner's bookkeeper, Alfredo Salas, and, without the presence of the petitioner who was ill and confined at the time, proceeded with the execution thereof. Two packages of records and a locked filing cabinet containing several papers and documents were seized by Almeda and a receipt therefor issued by him to Salas. The papers and documents seized were kept for a considerable length of time by the Anti-Usury Board and thereafter were turned over by it to the respondent fiscal who subsequently filed, in the Court of First Instance of Tarlac¹, six separate criminal cases against the herein petitioner for violation of the Anti-Usury Law. On several occasions, after seizure, the petitioner, through counsel, demanded from the respondent Anti-Usury Board the return of the documents seized. On January 7, and, by motion, on June 4, 1937, the legality of the search warrant was challenged by counsel for the petitioner in the six criminal cases and the devolution of the documents demanded. By resolution of October 5, 1937, the respondent Judge of First Instance denied the petitioner's motion of June 4 for the reason that though the search warrant was illegal, there was a waiver on the part of the petitioner. "En el caso presente" declared the respondent judge, "teniendo en cuenta que la acusada por si o por medio de su representante, no presento protesta alguna contra el registro de autos, al verificarse el mismo, o despues de un tiempo razonable, el juzgado declara que la citada acusada, con su silencio y conducta, ha renunciado implicitamente a su derecho a no ser sometido a un registro irrazonable, por lo que no le es permitido quejarse despues, puesto que cualquier defecto que ha adolecido la expedicion de la orden de registro y su ejecucion, ha quedado implicitamente subsanado." A motion for reconsideration was presented but was denied by order of

January 3, 1938. Petitioner registered her exception. The resolution of October 5, 1937 and the order of January 3, 1938 are sought, together with the search warrant, Exhibit B, to be nullified in these proceedings.

Paragraph 3, section 1 of the bill of rights of our Constitution provides as follows:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined 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."

Freedom from unreasonable searches and seizures is declared a popular right and for a search warrant to be valid, (1) it 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. These requirements are complemented by the Code of Criminal Procedure (G. O. No. 58), particularly with reference to the duration of the validity of the search warrant and the obligation of the officer seizing the property to deliver the same to the corresponding court (secs. 102-104). On more than one occasion, since the approval of the Constitution, we had emphasized the necessity of adherence to the constitutional requirements on this subject (*Alvarez vs. Court of First Instance of Tayabas* and (*Anti-Usury Board* [1937], 35 Off. Gaz., 1183; *People vs. Sy Juco* [1937], G. R. No. 41957; *Rodriguez vs. Villamiel* [1937], G. R. No. 44328; and *Molo vs. Yatco* [1936], 35 Off. Gaz., 1935) and we do not deem it necessary to reiterate what has been said or observed in these cases.

In the instant case the existence of probable cause was determined not by the judge himself but by the applicant. All that the judge did was to accept as true the affidavit made by agent Almeda. He did not decide for himself.

It does not appear that he examined the applicant and his witnesses, if any. Even accepting the description of the properties to be seized to be sufficient and on the assumption that the receipt issued is sufficiently detailed within the meaning of the law, the properties seized were not delivered to the court which issued the warrant, as required by law. (See secs. 95 and 104, G. O. No. 58.) instead, they were turned over to the respondent provincial fiscal and used by him in building up cases against the petitioner. Considering that at the time the warrant was issued there was no case pending against the petitioner, the averment that the warrant was issued primarily for exploration purposes is not without basis. The lower court is, therefore, correct in reaching the conclusion that the search warrant (Exhibit B) was illegally issued by the justice of the peace of Tarlac, Tarlac.

The important question presented is whether upon the facts and under the circumstances of the present case, there has been a waiver by the petitioner of her constitutional immunity against unreasonable searches and seizures. While the Solicitor-General admits that, in the light of decisions of this court, the search warrant was illegally issued, he maintains "(1) that the petitioner had waived her constitutional right by her acquiescence after the search and seizure, and (2) that the application for the return of the documents illegally seized was made after an unreasonable length of time after the date of seizure." doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived. (*People vs. Kagui Malasugui*, 34 Off. Gaz., pp. 2163, 2164; 56 C. J., pp. 1178, 1179; Cf. *Rodriguez vs. Villamiel*, supra.) The waiver may be either express or implied (67 C. J., p. 304). No express waiver has been made in the case before us. It is urged, however, that there has been a waiver by implication. It is well-settled that to constitute a waiver of a constitutional right, it must appear, first, that the right exists; secondly, that the person involved had knowledge, either actual or constructive, of the existence of such right; and, lastly, that said person had an actual intention to relinquish the right. (67 C. J., 299.) It is true that the petitioner did not object to the legality of the search when it was made. She could not have objected because she was sick and was not present when the warrant was served upon Alfredo Salas. Certainly,

the constitutional immunity from unreasonable searches and seizures, being a personal one, cannot be waived by anyone except the person whose rights are invaded or one who is expressly authorized to do so in his or her behalf. (56 C. J., p. 1183.) Of course, the petitioner came to know later of the seizure of some of her papers and documents. But this was precisely the reason why she sent her attorneys to the office of the Anti-Usury Board to demand the return of the documents seized. In any event, the failure on the part of the petitioner and her bookkeeper to resist or object to the execution of the warrant does not constitute an implied waiver of constitutional right. It is, as Judge Cooley observes, but a submission to the authority of the law. (Const. Lim., 8th ed., Vol. I, p. 630.) As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law. (56 C. J., pp. 1180, 1181.)

As a general proposition, it may be admitted that waiver may be the result of a failure to object within a reasonable time to a search and seizure illegally made. It must be observed, however, that the petitioner, on several occasions, and prior to the filing of criminal actions against her, had demanded verbally, through counsel, the return by the Anti-Usury Board of the properties seized. This is admitted by Adolfo N. Feliciano, acting chief of the board, who said that the demand was refused simply because no *habiamos terminado con nuestra investigacion*. (T. s. n., pp. 24-25.) On July 7, 1936, counsel for the petitioner wrote a letter to the Anti-Usury Board demanding again the return of the documents withheld. And in connection with the criminal cases pending against the petitioner, similar demands were made on January 7, 1937 and on June 4, 1937. In the light of these circumstances, we find that the petitioner did not waive her constitutional right. The delay in making demand for the return of the documents seized is not such as to result in waiver by implication.

In view of the foregoing, the writ prayed for is granted. The search warrant, Exhibit B, is hereby declared void and of no effect; the orders of October 5, 1937 and January 3, 1938 of the respondent judge are set aside; and the respondents Anti-Usury Board and the provincial fiscal of Tarlac or those acting in their behalf, are hereby ordered to return and restore to the petitioner all the properties, documents, papers and effects illegally seized from her, within forty-eight (48) hours from the time this decision becomes final. Without costs. So ordered.

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

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