

**SORIANO MATA, PETITIONER, VS. HON. JOSEPHINE K. BAYONA, IN
HER CAPACITY AS PRESI-DING JUDGE OF THE CITY COURT OF
ORMOC, BERNARDO GOLES AND REYNALDO MAYOTE,
RESPONDENTS.**

G.R. No. 50720. March 26, 1984

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

The validity of the search warrant issued by respondent Judge (not reappointed) is challenged by petitioner for its alleged failure to comply with the requisites of the Constitution and the Rules of Court.

Specifically, the contention is that the search warrant issued by respondent Judge was based merely on the application for search warrant and a joint affidavit of private respondents which were wrongfully it is alleged subscribed, and sworn to before the Clerk of Court of respondent Judge. Furthermore, there was allegedly a failure on the part of respondent Judge to attach the necessary papers pertinent to the issuance of the search warrant to the records of Criminal Case No. 4298-CC wherein petitioner is accused under PD 810, as amended by PD 1306, the information against him alleging that Soriano Mata offered, took and arranged bets on the Jai Alai game by "selling illegal tickets known as 'Masiao tickets' without any authority from the Philippine Jai Alai & Amusement Corporation or from the government authorities concerned." [1]

Petitioner claims that during the hearing of the case, he discovered that nowhere from the records of the said case could be found the search warrant and other pertinent papers connected to the issuance of the same, so that he had to inquire from the City Fiscal its whereabouts, and to which inquiry respondent Judge replied, "it is with the court". The Judge then handed the records to the Fiscal who attached them to the records.

This led petitioner to file a motion to quash and annul the search warrant and for the return of the articles seized, citing and invoking, among others, Section 4 of Rule 126 of the Revised Rules of Court. The motion was denied by respondent Judge on March 1, 1979, stating that the Court has made a thorough investigation and examination under oath of Bernardo U. Goles and Reynaldo T. Mayote, members of the Intelligence Section of 352nd PC Co./Police District II INP; that in fact the court made a certification to that effect; and that the fact that documents relating to the search warrant were not attached immediately to the record of the criminal case is of no moment, considering that the rule does not specify when these documents are to be attached to the records. [2] Petitioner's motion for reconsideration of the aforesaid order having been denied, he came to this Court, with the instant petition, praying, among others, that this Court declare the search warrant to be invalid and all the articles confiscated under such warrant as inadmissible as evidence in the case, or in any proceedings on the matter.

We hold that the search warrant is tainted with illegality for being violative of the Constitution and the Rules of Court.

Under the Constitution "no search warrant shall issue but upon probable cause to be determined by the Judge or

such other responsible officer as may be authorized by law after examination under oath or affirmation of the complainant and the witnesses he may produce". More emphatic and detailed is the implementing rule of the constitutional injunction, Section 4 of Rule 126 which provides that the judge must before issuing the warrant personally examine on oath or affirmation the complainant and any witnesses he may produce and take their depositions in writing, and attach them to the record, in addition to any affidavits presented to him.

Mere affidavits of the complainant and his witnesses are thus not sufficient. The examining Judge has to take depositions in writing of the complainant and the witnesses he may produce and to attach them to the record. Such written deposition is necessary in order that the Judge may be able to properly determine the existence or non-existence of the probable cause, and to hold liable for perjury the person giving it if it will be found later that his declarations are false.

We, therefore, hold that the search warrant is tainted with illegality by the failure of the Judge to conform with the essential requisites of taking the depositions in writing and attaching them to the record, rendering the search warrant invalid.

The judge's insistence that she examined the complainants under oath has become dubious by petitioner's claim that at the particular time when he examined all the relevant papers connected with the issuance of the questioned search warrant, after he demanded the same from the lower court since they were not attached to the records, he did not find any certification at the back of the joint affidavit of the complainants. As stated earlier, before he filed his motion to quash the search warrant and for the return of the articles seized, he was furnished, upon his request, certified true copies of the said affidavits by the Clerk of Court but which certified true copies do not bear any certification at the back. Petitioner likewise claims that his xerox copy of the said joint affidavit obtained at the outset of this case does not show also the certification of respondent judge. This doubt becomes more confirmed by respondent Judge's own admission, while insisting that she did examine thoroughly the applicants, that "she did not take the deposition of Mayote and Goles because to have done so would be to hold a judicial proceeding which will be open and public",^[3] such that, according to her, the persons subject of the intended raid will just disappear and move his illegal operations somewhere else.

Could it be that the certification was made belatedly to cure the defect of the warrant? Be that as it may, there was no "deposition in writing" attached to the records of the case in palpable disregard of the statutory prohibition heretofore quoted.

Respondent Judge impresses this Court that the urgency to stop the illegal gambling that lures every man, woman and child, and even the lowliest laborer who could hardly make both ends meet justifies her action. She claims that in order to abate the proliferation of this illegal "masiao" lottery, she thought it more prudent not to conduct the taking of deposition which is done usually and publicly in the court room.

Two points must be made clear. The term "depositions" is sometimes used in a broad sense to describe any written statement verified by oath; but in its more technical and appropriate sense the meaning of the word is limited to written testimony of a witness given in the course of a judicial proceeding advance of the trial or hearing upon oral examination.^[4] A deposition is the testimony of a witness, put or taken in writing, under oath or affirmation before a commissioner, examiner or other judicial officer, in answer to interlocutory and cross interlocutory, and usually subscribed by the witnesses.^[5] The searching questions propounded to the applicants of the search warrant and his witnesses must depend to a large extent upon the discretion of the Judge just as long as the answers establish a reasonable ground to believe the commission of a specific offense and that the applicant is one authorized by law, and said answers particularly describe with certainty the place to be searched and the persons or things to be seized. The examination or investigation which must be under oath may not be in public.

It may even be held in the secrecy of his chambers. Far more important is that the examination or investigation is not merely routinary but one that is thorough and elicit the required information. To repeat, it must be under oath and must be in writing.

The other point is that nothing can justify the issuance of the search warrant but the fulfillment of the legal requisites. It might be well to point out what has been said in *Asian Surety & Insurance Co., Inc. vs. Herrera*:

"It has been said that of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books, and papers from inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify in difference to the basic principles of government." [6]

Thus, in issuing a search warrant the Judge must strictly comply with the requirements of the Constitution and the statutory provisions. A liberal construction should be given in favor of the individual to prevent stealthy encroachment upon, or gradual depreciation of the rights secured by the Constitution. [7] No presumption of regularity are to be invoked in aid of the process when an officer undertakes to justify it. [8]

While We hold that the search warrant is illegal, the return of the things seized cannot be ordered. In *Castro vs. Pabalan*, [9] it was held that the illegality of the search warrant does not call for the return of the things seized, the possession of which is prohibited.

WHEREFORE, the writ of certiorari is granted and the order of March 1, 1979 denying the motion to annul the search warrant as well as the order of March 21, 1979 denying the motion for reconsideration are hereby reversed, the search warrant, being declared herein as illegal. Notwithstanding such illegality, the things seized under such warrant, such as stock of "masiao" tickets; "masiao" issue tickets; bet money; control pad or "masiao" numbers; stamping pad with rubber stamp marked Ormoc City Jai-Alai," cannot be returned as sought by petitioner. No costs.

SO ORDERED.

Makasiar, Acting C.J., (Chairman), Concepcion, Jr. and Guerrero, JJ., concur.

Aquino and Escolin, JJ., in the result.

Abad Santos, J., no part.

[1] Annex "A", of the petition, p. 7, Rollo.

[2] Annex "H" of the petition, p. 20, id.

[3] Comment, p. 31, id.

[4] 16 Am Jur, 699.

[5] Words & Phrases "Demand" p. 258.

[6] 54 SCRA 312.

[7] *Alvarez vs. Court of First Instance of Tayabas*, 64 Phil. 42.

[8] *People vs. Veloso*, 40 Phil. 169.

[9] 70 SCRA 478.

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