

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER, VS. HON. FIDEL PURISIMA, ETC., AND HON. VICENTE ERICTA AND JOSE DEL FIERO, ETC., RESPONDENTS.*G.R. No. 56429, May 28, 1988*

Ponente: NARVASA, J.

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The verdict in this special civil action of certiorari turns upon the question of whether or not the "Law on Secrecy of Bank Deposits"[1] precludes production by subpoena duces tecum of bank records of transactions by or in the names of the wife, children and friends of a special agent of the Bureau of Customs, accused before the Tanodbayan of having allegedly acquired property manifestly out of proportion to his salary and other lawful income, in violation of the "Anti-Graft and Corrupt Practices Act." [2]

The Customs special agent involved is Manuel Caturla, and the accusation against him was filed by the Bureau of Internal Revenue.[3] In the course of the preliminary investigation thereof, the Tanodbayan issued a subpoena duces tecum to the Banco Filipino Savings & Mortgage Bank, commanding its representative to appear at a specified time at the Office of the Tanodbayan and furnish the latter with duly certified copies of the records in all its branches and extension offices, of the loans, savings and time deposits and other banking transactions, dating back to 1969, appearing in the names of Caturla, his wife, Purita Caturla, their children — Manuel, Jr., Marilyn and Michael — and/or Pedro Escuyos.[4]

Caturla moved to quash the subpoena duces tecum,[5] arguing that compliance therewith would result in a violation of Sections 2 and 3 of the Law on Secrecy of Bank Deposits. Then Tanodbayan Vicente Ericta not only denied the motion for lack of merit, and directed compliance with the subpoena,[6] but also expanded its scope through a second subpoena duces tecum,[7] this time requiring production by Banco Filipino of the bank records in all its branches and extension offices, of Siargao Agro-Industrial Corporation, Pedro Escuyos or his wife, Emeterio Escuyos, Purita Caturla, Lucia Escuyos or her husband, Romeo Escuyos, Emerson Escuyos, Fraterno Caturla, Amparo Montilla, Cesar Caturla, Manuel Caturla or his children, Manuel Jr., Marilyn and Michael, LTD Pub/Restaurant, and Jose Buo or his wife, Evelyn. Two other subpoenae of substantially the same tenor as the second were released by the Tanodbayan's Office.[8] The last required obedience under sanction of contempt.

The Banco Filipino Savings & Mortgage Bank, hereafter referred to simply as BF Bank, took over from Caturla in the effort to nullify the subpoenae. It filed a complaint for declaratory relief with the Court of First Instance of Manila,[9] which was assigned by raffle to the sala of respondent Judge Fidel Purisima. BF Bank prayed for a judicial declaration as to whether its compliance with the subpoenae duces tecum would constitute an infringement of the provisions of Sections 2 and 3 of R.A. No. 1405 in relation to Section 8 of R.A. No. 3019. It also asked that pending final resolution of the question, the Tanodbayan be provisionally restrained from exacting compliance with the subpoenae.

Respondent Judge Purisima issued an Order denying for lack of merit the application by BF Bank for a

preliminary injunction and/or restraining order." [10]

This Order is now impugned in the instant certiorari action instituted by BF Bank before this Court, as having been issued with grave abuse of discretion, amounting to lack of jurisdiction. It is the bank's theory that the order declining to grant that remedy operated as a premature adjudication of the very issue raised in the declaratory suit, and as judicial sufferance of a transgression of the bank deposits statute, and so constituted grievous error correctible by certiorari. It further argues that the subpoenae in question are in the nature of "fishing expeditions" or "general warrants" since they authorize indiscriminate inquiry into bank records; that, assuming that such an inquiry is allowed as regards public officials under investigation for a violation of the Anti-Graft & Corrupt Practices Act, it is constitutionally impermissible with respect to private individuals or public officials not under investigation on a charge of violating said Act; and that while prosecution of offenses should not, as a rule, be enjoined, there are recognized exceptions to the principle one of which is here present, i.e., to avoid multiplicity of suits, similar subpoenae having been directed to other bank's as well.

It is difficult to see how the refusal by the Court a quo to issue the temporary restraining order applied for by the petitioner — in other words, its disagreement with the petitioner's advocated theory — could be deemed so whimsical, capricious, despotic or oppressive an act as to constitute grave abuse of discretion. Obviously, the writ of certiorari cannot issue simply on a showing of disagreement between a party and the court upon some material factual or legal issue. There must be a reasonable demonstration that a party's contentions are so clearly correct, or the court's ruling thereon so clearly wrong, to justify the issuance of a writ of certiorari. No such demonstration exists in this case. Indeed, for aught that the record shows, the Court's refusal to grant the application for a restraining order was, in the premises, licit and proper, or its validity, fairly debatable, at the very least. Be this as it may, on the merits the petitioner cannot succeed. Its declared theory is untenable.

The provisions of R.A. No. 1405 subject of BF's declaratory action, read as follows:

"Sec. 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of litigation."

"Sec. 3. It shall be unlawful for any official or employee of a banking institution to disclose to any person other than those mentioned in Section two hereof any information concerning said deposits."

The other provision involved in the declaratory action is Section 8 of R.A. No. 3019. It reads:

"Sec. 8. Dismissal due to unexplained wealth. — If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to this salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary."

In our decision in *Philippine National Bank v. Gancayco*, rendered on September 30, 1965, [11] we upheld the judgment of the Trial Court "sustaining the power of the defendants (special prosecutors of the Department of Justice) to compel the disclosure (by PNB) of bank accounts of ACCFA Administrator Jimenez (then under

investigation for unexplained wealth), *** (it being ruled) that, by enacting Section 8 of the Anti-Graft and Corrupt Practices Act, Congress clearly intended to provide an additional ground for the examination of bank deposits *** (for) without such provision, the *** prosecutors would be hampered if not altogether frustrated in the prosecution of those charged with having acquired unexplained wealth while in public office.[12] We ourselves declared in said case that[13] —

**** while Republic Act No. 1405 provides that bank deposits are 'absolutely confidential *** and [therefore] may not be examined, inquired or looked into,' except in those cases enumerated therein, the Anti-Graft Law directs in mandatory terms that bank deposits 'shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.' The only conclusion possible is that Section 8 of the Anti-Graft Law is intended to amend Section 2 of Republic Act No. 1405 by providing an additional exception to the rule against the disclosure of bank deposits.

*** *** **** Cases of unexplained wealth[14] are similar to cases of bribery or dereliction of duty[15] and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. The policy as to one cannot be different from the policy as to the other. This policy expresses the notion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny."

The inquiry into illegally acquired property — or property NOT "legitimately acquired" — extends to cases where such property is concealed by being held by or recorded in the name of other persons. This proposition is made clear by R.A. No. 3019 which quite categorically states that the term, "legitimately acquired property of a public officer or employee shall not include *** property unlawfully acquired by the respondent, but its ownership is concealed by its being recorded in the name of, or held by respondent's spouse, ascendants, descendants, relatives or any other persons.[16]

To sustain the petitioner's theory, and restrict the inquiry only to property held by or in the name of the government official or employee, or his spouse and unmarried children is unwarranted in the light of the provisions of the statutes in question, and would make available to persons in government who illegally acquire property an easy and fool-proof means of evading investigation and prosecution: all they would have to do would be to simply place the property in the possession or name of persons other than their spouse and unmarried children. This is an absurdity that we will not ascribe to the lawmakers.

The power of the Tanodbayan to issue subpoenae ad testificandum and subpoenae duces tecum at the time in question is not disputed, and at any rate does not admit of doubt.[17] The subpoenae issued by him. will be sustained against the petitioner's impugnation.

WHEREFORE, the petition for certiorari is DISMISSED, with costs against petitioner.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] R.A. No. 1405.

[2] R.A. No. 3019.

[3] Docketed as Tanodbayan (TBP) Case No. 8006 19-07.

[4] Annex A. petition

[5] Annex B. petition

[6] Annex C. petition

[7] Annex D. petition

[8] Annexes E and F. petition

[9] Annex G. petition

[10] Annex H. petition.

[11] 15 SCRA 91.

[12] 15 SCRA 94.

[13] 15 SCRA 95. 96.

[14] Under Acl 3019, the Anti-Graft and Corrupt Practices Law.

[15] Mentioned in Sec. 2. RA 1405 as excepted cases, .supra.

[16] Sec. 1. par. (6). sub-par. (1): emphasis supplied.

[17] Sec. 10. F.D. No. 1630.

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