

**JOSE BURGOS, SR., JOSE BURGOS, JR., BAYANI SORIANO AND
J.BURGOS MEDIA SERVICES, INC., PETITIONERS, VS. THE CHIEF OF
STAFF, ARMED FORCES OF THE PHILIPPINES, THE CHIEF
PHILIPPINE ...**

G.R. No. 64261. December 26, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Assailed in this petition for certiorari, prohibition and mandamus with preliminary mandatory and prohibitory injunction is the validity of two[2] search warrants issued on December 7, 1982 by respondent Judge Ernani Cruz-Pano, Executive Judge of the then Court of First Instance of Rizal [Quezon City], under which the premises known as No. 19, Road 3, Project 6, Quezon City, and 784 Units C & D, RMS Building, Quezon Avenue, Quezon City, business addresses of the "Metropolitan Mail" and "We Forum" newspapers, respectively, were searched, and office and printing machines, equipment, paraphernalia, motor vehicles and other articles used in the printing, publication and distribution of the said newspapers, as well as numerous papers, documents, books and other written literature alleged to be in the possession and control of petitioner Jose Burgos, Jr. publisher-editor of the "We Forum" newspaper, were seized.

Petitioners further pray that a writ of preliminary mandatory and prohibitory injunction be issued for the return of the seized articles, and that respondents, "particularly the Chief Legal Officer, Presidential Security Command, the Judge Advocate General, AFP, the City Fiscal of Quezon City, their representatives, assistants, subalterns, subordinates, substitute or successors" be enjoined from using the articles thus seized as evidence against petitioner Jose Burgos, Jr. and the other accused in Criminal Case No. Q-022782 of the Regional Trial Court of Quezon City, entitled "People vs. Jose Burgos, Jr. et al." [1]

In our Resolution dated June 21, 1983, respondents were required to answer the petition. The plea for preliminary mandatory and prohibitory injunction was set for hearing on June 28, 1983, later reset to July 7, 1983, on motion of the Solicitor General in behalf of respondents.

At the hearing on July 7, 1983, the Solicitor General, while opposing petitioners' prayer for a writ of preliminary mandatory injunction, manifested that respondents "will not use the aforementioned articles as evidence in the aforementioned case until final resolution of the legality of the seizure of the aforementioned articles, x x x." [2] With this manifestation, the prayer for preliminary prohibitory injunction was rendered moot and academic.

Respondents would have this Court dismiss the petition on the ground that petitioners had come to this Court without having previously sought the quashal of the search warrants before respondent judge. Indeed, petitioners, before impugning the validity of the warrants before this Court, should have filed a motion to quash said warrants in the court that issued them.[3] But this procedural flaw notwithstanding, we take cognizance of this petition in view of the seriousness and urgency of the constitutional issues raised, not to mention the public interest generated by the search of the "We Forum" offices, which was televised in Channel 7 and widely publicized in all

metropolitan dailies. The existence of this special circumstance justifies this Court to exercise its inherent power to suspend its rules. In the words of the revered Mr. Justice Abad Santos in the case of *C. Vda. de Ordoveza vs. Raymundo*, [4] "it is always in the power of the court [Supreme Court] to suspend its rules or to except a particular case from its operation, whenever the purposes of justice require it x x x."

Respondents likewise urge dismissal of the petition on ground of laches. Considerable stress is laid on the fact that while said search warrants were issued on December 7, 1982, the instant petition impugning the same was filed only on June 16, 1983 or after the lapse of a period of more than six[6] months.

Laches is failure or negligence for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. [5]

Petitioners, in their Consolidated Reply, explained the reason for the delay in the filing of the petition thus:

"Respondents should not find fault, as they now do [p. 1, Answer, p. 3, Manifestation] with the fact that the Petition was filed on June 16, 1983, more than half a year after the petitioners' premises had been raided.

"The climate of the times has given petitioners no other choice. If they had waited this long to bring their case to court, it was because they tried at first to exhaust other remedies. The events of the past eleven[11] years had taught them that everything in this country, from release of public funds to release of detained persons from custody, has become a matter of executive benevolence or largesse.

"Hence, as soon as they could, petitioners, upon suggestion of persons close to the President, like Fiscal Flaminiano, sent a letter to President Marcos, through counsel Antonio Coronel asking the return at least of the printing equipment and vehicles. And after such a letter had been sent, through Col. Balbino V. Diego, Chief Intelligence and Legal Officer of the Presidential Security Command, they were further encouraged to hope that the latter would yield the desired results.

"After waiting in vain for five[5] months, petitioners finally decided to come to Court." [pp. 123-124, Rollo]

Although the reason given by petitioners may not be flattering to our judicial system, We find no ground to punish or chastise them for an error in judgment. On the contrary, the extrajudicial efforts exerted by petitioners quite evidently negate the presumption that they had abandoned their right to the possession of the seized property, thereby refuting the charge of laches against them.

Respondents also submit the theory that since petitioner Jose Burgos, Jr. had used and marked as evidence some of the seized documents in Criminal Case No. Q-022872, he is now estopped from challenging the validity of the search warrants. We do not follow the logic of respondents. These documents lawfully belong to petitioner Jose Burgos, Jr. and he can do whatever he pleases with them, within legal bounds. The fact that he has used them as evidence does not and cannot in any way affect the validity or invalidity of the search warrants assailed in this petition.

Several and diverse reasons have been advanced by petitioners to nullify the search warrants in question.

Petitioners fault respondent judge for his alleged failure to conduct an examination under oath or affirmation of the applicant and his witnesses, as mandated by the above-quoted constitutional provision as well as Sec. 4, Rule 126 of the Rules of Court.[6] This objection, however, may properly be considered moot and academic, as petitioners themselves conceded during the hearing on August 9, 1983, that an examination had indeed been conducted by respondent judge of Col. Abadilla and his witnesses.

Search Warrants No. 20-82[a] and No. 20-82[b] were used to search two distinct places: No. 19, Road 3, Project 6, Quezon City and 784 Units C & D, RMS Building, Quezon Avenue, Quezon City, respectively. Objection is interposed to the execution of Search Warrant No. 20-82 [b] at the latter address on the ground that the two search warrants pinpointed only one place where petitioner Jose Burgos, Jr. was allegedly keeping and concealing the articles listed therein, i.e., No. 19, Road 3, Project 6, Quezon City. This assertion is based on that portion of Search Warrant No. 20-82[b] which states:

"Which have been used, and are being used as instruments and means of committing the crime of subversion penalized under P.D. 885 as amended and he is keeping and concealing the same at 19 Road 3, Project 6, Quezon City."

The defect pointed out is obviously a typographical error. Precisely, two search warrants were applied for and issued because the purpose and intent were to search two distinct premises. It would be quite absurd and illogical for respondent judge to have issued two warrants intended for one and the same place. Besides, the addresses of the places sought to be searched were specifically set forth in the application, and since it was Col. Abadilla himself who headed the team which executed the search warrants, the ambiguity that might have arisen by reason of the typographical error is more apparent than real. The fact is that the place for which Search Warrant No. 20-82[b] was applied for was 728 Units C & D, RMS Building, Quezon Avenue, Quezon City, which address appeared in the opening paragraph of the said warrant.[7] Obviously, this is the same place that respondent judge had in mind when he issued Warrant No. 20-82 fb].

In the determination of whether a search warrant describes the premises to be searched with sufficient particularity, it has been held 'that the executing officer's prior knowledge as to the place intended in the warrant is relevant. This would seem to be especially true where the executing officer is the affiant on whose affidavit the warrant had issued, and when he knows that the judge who issued the warrant intended the building described in the affidavit. And it has also been said that the executing officer may look to the affidavit in the official court file to resolve an ambiguity in the warrant as to the place to be searched.'" [8]

3. Another ground relied upon to annul the search warrants is the fact that although the warrants were directed against Jose Burgos, Jr. alone, articles belonging to his co-petitioners Jose Burgos, Sr., Bayani Soriano and the J. Burgos Media Services, Inc. were seized.

Section 2, Rule 126 of the Rules of Court, enumerates the personal properties that may be seized under a search warrant, to wit:

"SEC. 2. Personal Property to be seized.— A search warrant may be issued for the search and seizure of the following personal property:

Property subject of the offense;

Property stolen or embezzled and other proceeds or fruits of the offense; and

Property used or intended to be used as the means of committing an offense.

The above rule does not require that the property to be seized should be owned by the person against whom the search warrant is directed. It may or may not be owned by him. In fact, under subsection [b] of the above-quoted Section 2, one of the properties that may be seized is stolen property. Necessarily, stolen property must be owned by one other than the person in whose possession it may be at the time of the search and seizure. Ownership, therefore, is of no consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized, as petitioner Jose Burgos, Jr. was alleged to have in relation to the articles and property seized under the warrants.

4. Neither is there merit in petitioners' assertion that real properties were seized under the disputed warrants. Under Article 415[5] of the Civil Code of the Philippines, "machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land and which tend directly to meet the needs of the said industry or works" are considered immovable property. In *Davao Sawmill Co. vs. Castillo* [9] where this legal provision was invoked, this Court ruled that machinery which is movable by nature becomes immobilized when placed by the owner of the tenement, property or plant, but not so when placed by a tenant, usufructuary, or any other person having only a temporary right, unless such person acted as the agent of the owner.

In the case at bar, petitioners do not claim to be the owners of the land and/or building on which the machineries were placed. This being the case, the machineries in question, while in fact bolted to the ground remain movable property susceptible to seizure under a search warrant.

5. The questioned search warrants were issued by respondent judge upon application of Col. Rolando N. Abadilla, Intelligence Officer of the P.C. Metrocom.[10] The application was accompanied by the Joint Affidavit of Alejandro M. Gutierrez and Pedro U. Tango[11], members of the Metrocom Intelligence and Security Group under Col. Abadilla which conducted a surveillance of the premises prior to the filing of the application for the search warrants on December 7, 1982.

It is contended by petitioners, however, that the above-mentioned documents could not have provided sufficient basis for the finding of a probable cause upon which a warrant may validly issue in accordance with Section 3, Article IV of the 1973 Constitution which provides:

"SEC. 3. x x x and no search warrant or warrant of arrest shall issue except 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, and particularly describing the place to be searched and the persons or things to be seized."

We find petitioners' thesis impressed with merit. Probable cause for a search is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. And when the search warrant applied for is directed against a newspaper publisher or editor in connection with the publication of subversive materials, as in the case at bar, the application and/or its supporting affidavits must contain a specification, stating with particularity the alleged subversive material he has published or is intending to publish. Mere generalization will not suffice. Thus, the broad statement in Col. Abadilla's application that petitioner "is in possession or has in his control printing equipment and other paraphernalia, news publications and other documents which were used and are all continuously being used as a means of committing the offense of subversion punishable under Presidential Decree 885, as amended x x x"[12] is a mere conclusion of law and does not satisfy the requirements of probable cause. Bereft of such particulars as would justify a finding of the existence of probable cause, said allegation cannot serve as basis for the issuance of a search warrant and it was a grave error for respondent judge to have done so.

Equally insufficient as basis for the determination of probable cause is the statement contained in the joint affidavit of Alejandro M. Gutierrez and Pedro U. Tango, "that the evidence gathered and collated by our unit clearly shows that the premises above-mentioned and the articles and things above-described were used and are continuously being used for subversive activities in conspiracy with, and to promote the objective of, illegal organizations such as the Light-a-Fire Movement, Movement for Free Philippines, and April 6 Movement." [13]

In mandating that "no warrant shall issue except upon probable cause to be determined by the judge, x x x after

examination under oath or affirmation of the complainant and the witnesses he may produce;[14] the Constitution requires no less than personal knowledge by the complainant or his witnesses of the facts upon which the issuance of a search warrant may be justified. In *Alvarez vs. Court of First Instance*,[15] this Court ruled that "the oath required must refer to the truth of the facts within the personal knowledge of the petitioner or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause." As couched, the quoted averment in said joint affidavit filed before respondent judge hardly meets the test of sufficiency established by this Court in *Alvarez* case.

Another factor which makes the search warrants under consideration constitutionally objectionable is that they are in the nature of general warrants. The search warrants describe the articles sought to be seized in this wise:

"1] All printing equipment, paraphernalia, paper, ink, photo equipment, typewriters, cabinets, tables, communications/recording equipment, tape recorders, dictaphone and the like used and/or connected in the printing of the "WE FORUM" newspaper and any and all documents, communications, letters and facsimile of prints related to the "WE FORUM" newspaper.

2] Subversive documents, pamphlets, leaflets, books, and other publications to promote the objectives and purposes of the subversive organizations known as Movement for Free Philippines, Light-a-Fire Movement and April 6 Movement; and,

3] Motor vehicles used in the distribution/circulation of the "WE FORUM" and other subversive materials and propaganda, more particularly,

1] Toyota-Corolla, colored yellow with Plate No. NKA 892; 2] DATSUN pick-up colored white with Plate No. NKV 969; 3] A delivery truck with Plate No. NBS 542;

4] TOYOTA-TAMARAW, colored white with Plate No. PBP 665; and,

5] TOYOTA Hi-Lux, pick-up truck with Plate No. NGV 472 with marking 'Bagong Silang.'

In *Stanford vs. State of Texas*,[16] the search warrant which authorized the search for "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Parties of Texas, and the operations of the Communist Party in Texas," was declared void by the U.S. Supreme Court for being too general. In like manner, directions to "seize any evidence in connection with the violation of SDC 13-3703 or otherwise" have been held too general, and that portion of a search warrant which authorized the seizure of any "paraphernalia which could be used to violate Sec. 54-197 of the Connecticut General Statutes [the statute dealing with the crime of conspiracy]" was held to be a general warrant, and therefore invalid.[17]The description of the articles sought to be seized under the search warrants in question cannot be characterized differently.

In the *Stanford* case, the U.S. Supreme Court calls to mind a notable chapter in English history: the era of disaccord between the Tudor Government and the English Press, when "officers of the Crown were given roving commissions to search where they pleased in order to suppress and destroy the literature of dissent both Catholic and Puritan." Reference herein to such historical episode would not be relevant for it is not the policy of our government to suppress any newspaper or publication that speaks with "the voice of non-conformity" but poses no clear and imminent danger to state security.

As heretofore stated, the premises searched were the business and printing offices of the "Metropolitan Mail" and the "We Forum" newspapers. As a consequence of the search and seizure, these premises were padlocked and sealed, with the further result that the printing and publication of said newspapers were discontinued.

Such closure is in the nature of previous restraint or censorship abhorrent to the freedom of the press guaranteed under the fundamental law,[18] and constitutes a virtual denial of petitioners' freedom to express themselves in print. This state of being is patently anathematic to a democratic framework where a free, alert and even militant press is essential for the political enlightenment and growth of the citizenry.

Respondents would justify the continued sealing of the printing machines on the ground that they have been sequestered under Section 8 of Presidential Decree No. 885, as amended, which authorizes "the sequestration of the property of any person, natural or artificial, engaged in subversive activities against the government and its duly constituted authorities x x x in accordance with implementing rules and regulations as may be issued by the Secretary of National Defense." It is doubtful, however, if sequestration could validly be effected in view of the absence of any implementing rules and regulations promulgated by the Minister of National Defense.

Besides, in the December 10, 1982 issue of the Daily Express, it was reported that no less than President Marcos himself denied the request of the military authorities to sequester the property seized from petitioners on December 7, 1982. Thus,

"The President denied a request filed by government prosecutors for sequestration of the WE FORUM newspaper and its printing presses, according to Information Minister Gregorio S. Cendaña.

"On the basis of court orders, government agents went to the We Forum offices in Quezon City and took a detailed inventory of the equipment and all materials in the premises.

"Cendana said that because of the denial, the newspaper and its equipment remain at the disposal of the owners, subject to the discretion of the court." [19]

That the property seized on December 7, 1982 had not been sequestered is further confirmed by the reply of then Foreign Minister Carlos P. Romulo to the letter dated February 10, 1983 of U. S. Congressman Tony P. Hall addressed to President Marcos, expressing alarm over the "WE FORUM" case.[20] In this reply dated February 11, 1983, Minister Romulo stated:

"2. Contrary to reports, President Marcos turned down the recommendation of our authorities to close the paper's printing facilities and confiscate the equipment and materials it uses." [21]

IN VIEW OF THE FOREGOING, Search Warrants Nos. 20- 82[a] and 20-82[b] issued by respondent judge on December 7, 1982 are hereby declared null and void and are accordingly set aside. The prayer for a writ of mandatory injunction for the return of the seized articles is hereby granted and all articles seized thereunder are hereby ordered released to petitioners. No costs.

SO ORDERED.

Fernando, C.J., Makasiar, Conception Jr., Melencio-Herrera, Pland, Relova, Gutierrez, Jr., De la Fuente and Cuevas, JJ., concur.

Teehankee, J., I concur with the main opinion of Mr. Justice Escolin and the concurrence of Mr. Justice Abad Santos.

Abad Santos, J., see concurring opinion.

Aquino, J., took no part.

[1] Petition, P.44, Rollo.

[2] Manifestation and Opposition, P.75, Rollo.

[3] Templo vs. Dela Cruz, 60 SCRA 295.

[4] 63 Phil. 275.

[5] Tijam vs. Sibonghanoy, 23 SCRA 29.

[6] Sec. 4, Rule 126, Rules of Court provides:

Sec. 4, Examination of the Applicant.-- The municipal or city judge must, before issuing the warrant, personally examine on oath or affirmation the complainant and any witnesses he may produce and take their deposition in writing and attach them to the record, in addition to any affidavits presented to them.

[7] The Opening paragraph of Search Warrant No. 20-82[b] reads:

"It appearing to the satisfaction of the undersigned after examination under oath of Maj. Alejandro M. Gutierrez and Lt. Pedro U. Tango, that there are good and sufficient reason to believe that Jose Burghos, Jr. Publisher-Editor of 'WE FORUM' with office address at 784 Units C & D, RMS Building, Quezon Avenue, Quezon City, has in his possession and control at said address the following: xxx."

[8] 68 Am. Jur. 2d., 729.

[9] 61 Phil. 709.

[10] Annex "C", Petition, pp. 51-52, Rollo.

[11] Annex "B", Petition, pp. 53-54, Rollo.

[12] Annex "C", Petition, p. 51, Rollo.

[13] Annex "D", Petition, p. 54, Rollo.

[14] Sec. 3, Art. IV, 1973 Constitution.

[15] 64 Phil. 33.

[16] 379 U.S. 476, 13 L Ed 2nd 431.

[17] 68 Am. Jur. 2d, pp. 736-737.

[18] Sec. 9, Art IV of the Constitution.

[19] Annex "K", Consolidated Reply, p. 175, Rollo.

[20] Annex "L", Consolidated Reply, p. 178, Rollo.

[21] Annex "M", Consolidated Reply, p. 179, Rollo.

CONCURRING

ABAD SANTOS, J.:

I am glad to give my concurrence to the ponencia of Mr. Justice Escolin. At the same time I wish to state my own reasons for holding that the search warrants which are the subject of the petition are utterly void.

The action against WE FORUM was a naked suppression of press freedom for the search warrants were issued in gross violation of the Constitution.

The Constitutional requirement which is expressed in Section 3, Article IV, stresses two points, namely: "(1) that no warrant shall issue but upon probable cause, to be determined by the judge in the manner set forth in said provision; and (2) that the warrant shall particularly describe the things to be seized." (Stonehill vs. Diokno, 126 Phil. 738, 747; 20 SCRA 383[1967] .)

Any search which is conducted in disregard of the points mentioned above will result in wiping "out completely one of the most fundamental rights guaranteed in our Constitution, for it would place the sanctity of the domicile and the privacy of communication and correspondence at the mercy of the whims, caprice or passion of peace officers." (Ibid., p.748.)

The two search warrants were issued without probable cause. To satisfy the requirement of probable cause a specific offense must be alleged in the application; abstract averments will not suffice. In the case at bar nothing specifically subversive has been alleged; stated only is the claim that certain objects were being used as instruments and means of committing the offense of subversion punishable under P.D. No. 885, as amended. There is no mention of any specific provision of the decree. In the words of Chief Justice Concepcion, "It would be legal heresy, of the highest order, to convict anybody" of violating the decree without reference to any determinate provision thereof.

The search warrants are also void for lack of particularity. Both search warrants authorize Col. Rolando Abadilla to seize and take possession, among other things, of the following:

"Subversive documents, pamphlets, leaflets, books and other publication to promote the objectives and purposes of the subversive organizations known as Movement for Free Philippines, Light-a-Fire Movement and April 6 Movement."

The obvious questions is: Why were documents, pamphlets, leaflets, books, etc. subversive? What did they contain to make them subversive? There is nothing in the applications nor in the warrants which answers the questions. I must, therefore, conclude that the warrants are general warrants which are obnoxious to the Constitution.

In point of fact, there was nothing subversive published in the WE FORUM just as there is nothing subversive which has been published in MALAYA which has replaced the former and has the same content but against which no action has been taken.

Conformably with existing jurisprudence everything seized pursuant to the warrants should be returned to the owners and all of the items are subject to the exclusionary rule of evidence.

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