

**ROMMEL CORRO, PETITIONER, VS. HON. ESTEBAN LISING,
PRESIDING JUDGE, REGIONAL TRIAL COURT, QUEZON CITY,
BRANCH XCV; HON. REMIGIO ZARI, REGIONAL TRIAL COURT,
QUEZON CITY, BRANCH 9...**

G.R. No. 69899. July 15, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

On September 29, 1983, respondent Regional Trial Court Judge Esteban Lising of Quezon City, upon application filed by Lt. Col. Berlin Castillo of the Philippine Constabulary Criminal Investigation Service, issued Search Warrant No. Q-00002 authorizing the search and seizure of —

"1. Printed copies of Philippine Times;

2.

Manuscripts/drafts of articles for publication in the Philippine Times;

3.

Newspaper dummies of the Philippine Times;

4.

Subversive documents, articles, printed matters, handbills, leaflets, banners;

5.

Typewriters, duplicating machines, mimeographing and tape recording machines, video machines and tapes

which have been used and are being used as instrument and means of committing the crime of inciting to sedition defined and penalized under Article 142 of the Revised Penal Code, as amended by PD 1835 x x x" (p. 24, Rollo)

On November 6, 1984, petitioner filed an urgent motion to recall warrant and to return documents/personal properties alleging among others that:

"2. x x x the properties seized are typewriters, duplicating machines, mimeographing and tape recording machines, video machines and tapes which are not in any way, inanimate or mute things as they are, connected

with the offense of inciting to sedition.

"3. More so, documents or papers seized purporting to do the body of the crime has been rendered moot and academic due to the findings of the Agrava Board that a military conspiracy was responsible for the slaying of the late Senator Benigno Aquino, Jr. on August 21, 1983 at the Manila International Airport. The Agrava Board which has the exclusive jurisdiction to determine the facts and circumstances behind the killing had virtually affirmed by evidence testamentary and documentary the fact that soldiers killed Benigno Aquino, Jr.

"4. More so, the grave offense of libel, RTC, Q.C. Branch XCV has dismissed said case against the accused on all documents pertinent and more so as we repeat, rendered moot and academic by the recent Agrava Report." (p. 27, Rollo)

On January 28, 1985, respondent Judge Lising denied the motion in a resolution, pertinent portions of which state:

"x x x The said articles presently form part of the evidence of the prosecution and they are not under the control of the prosecuting arm of the government. Under these circumstances, the proper forum from which the petition to withdraw the articles should be addressed, is the Office of the City Fiscal, Quezon City and not with this Branch of the Court. It is to be further noted that it is not even with this Branch of the Court that the offense of inciting to sedition is pending." (p. 29 Rollo)

Hence, this petition for certiorari and mandamus, with application for preliminary injunction and restraining order to enjoin respondent Regional Trial Court, National Capital Region, Branch 98 from proceeding with the trial of Criminal Case No. 83-Q-29243, praying: (a) that Search Warrant No. Q-00002 issued by respondent Judge Esteban M. Lising be declared null and void ab initio and that a mandatory injunction be issued directing respondents City Fiscal's Office of Quezon City and Lt. Col. Berlin Castillo and 1st Lt. Godofredo Ignacio jointly and severally to return immediately the documents/properties illegally seized from herein petitioner and that final injunction be issued enjoining respondents City Fiscal's Office of Quezon City, Lt. Col. Castillo and 1st Lt. Ignacio from utilizing said documents/properties as evidence in Criminal Case No. 29243; and (b) that respondent PC-CIS officers Lt. Col. Berlin A. Castillo and 1st Lt. Godofredo Ignacio be directed to reopen the padlocked office premises of the Philippine Times at 610 Mezzanine Floor, Gochengco Building, T. M. Kalaw, Ermita, Manila

In Our Resolution of February 19, 1985, respondents were required to file their comment. The plea for temporary restraining order was granted and respondents City Fiscal's Office of Quezon City, Lt. Col. Berlin Castillo and 1st Lt. Godofredo Ignacio were enjoined from introducing as evidence for the state the documents/properties seized under Search Warrant No. Q-00002 in Criminal Case No. Q-29243 (Sedition case against petitioner), pending before the Regional Trial Court of Quezon City, Branch 98, effective immediately and continuing until further orders from the Court.

Respondents would have this Court dismiss the petition on the ground that (1) the present action is premature because petitioner should have filed a motion for reconsideration of respondent Judge Lising's order of January 28, 1985; (2) probable cause exists justifying the issuance of a search warrant; (3) the articles seized were adequately described in the search warrant; (4) a search was conducted in an orderly manner; (5) the padlocking of the searched premises was with the consent of petitioner's wife; (6) the findings of the Agrava Board is irrelevant to the issue of the validity of the search warrant; (7) press freedom is not an issue; and, (8) the petition is barred by laches.

There is merit in the petition.

Respondents contend that petitioner should have filed a motion for reconsideration of the order in question before coming to Us. This is not always so. When the questions raised before the Supreme Court are the same as those

which were squarely raised in and passed upon by the lower court, the filing of the motion for reconsideration in said court before certiorari can be instituted in the Supreme Court is no longer a prerequisite. As held in *Bache & Co. (Phil.), Inc. vs. Ruiz*, 37 SCRA 823, "[t]he rule requiring the filing of a motion for reconsideration before an application for a writ of certiorari can be entertained was never intended to be applied without considering the circumstances. The rule does not apply where, the deprivation of petitioners' fundamental right to due process taints the proceeding against them in the court below not only with irregularity but also with nullity." Likewise, in *Pajo, et al. vs. Ago, et al.*, 108 Phil. 905 and in *Gonzales vs. Court of Appeals*, 3 SCRA 465, this Court ruled that "it is only when questions are raised for the first time before the high court in a certiorari case that the writ shall not issue, unless the lower court had first been given an opportunity to pass upon the same." Further, in the case of *Matute vs. Court of Appeals*, 26 SCRA 768, We held that "while as a matter of policy a motion for reconsideration in the lower court has often been considered a condition sine qua non for the granting of a writ of certiorari, this rule does not apply 'where the proceeding in which the error occurred is a patent nullity' or where 'the deprivation of petitioner's fundamental right to due process x x x taints the proceeding against him in the court below not only with irregularity but with nullity' (*Luzon Surety Co. v. Marbella, et al.*, L-16038, Sept. 30, 1960), or when special circumstances warrant immediate and more direct action. x x x." The records of this petition clearly disclose that the issues herein raised have already been presented to and passed upon by the court a quo.

Section 3, Article IV of the 1973 Constitution provides:

"SEC. 3. x x x no search warrant or warrant of arrest 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."

and, Section 3, Rule 126 of the New Rules of Court, states that:

"SEC. 3. Requisites for issuing search warrant. — A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the judge or justice of the peace 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."

Probable cause may be defined as "such reasons, supported by facts and circumstances, as will warrant a cautious man in the belief that his actions, and the means taken in prosecuting it, are legally just and proper (*Burton vs. St. Paul, M & M. Ry. Co.*, 33 Minn. 189, cited in *U.S. vs. Addison*, 28 Phil. 566)." Thus, an application for search warrant must state with particularity the alleged subversive materials published or intended to be published by the publisher and editor of the *Philippine Times*, *Rommel Corro*. As We have stated in *Burgos, Sr. vs. Chief of Staff of the Armed Forces of the Philippines*, 133 SCRA 800, "mere generalization will not suffice." A search warrant should particularly describe the place to be searched and the things to be seized. "The evident purpose and intent of this requirement is to limit the things to be seized to those, and only those, particularly described in the searched warrant — to leave the officers of the law with no discretion regarding what articles they should seize, to the end that unreasonable searches and seizures may not be committed, — that abuses may not be committed (*Bache & Co. (Phil.), Inc. vs. Ruiz*, supra)." The affidavit of Col. Castillo states that in several issues of the *Philippine Times*:

"x x x we found that the said publication in fact foments distrust and hatred against the government of the Philippines and its duly constituted authorities, defined and penalized by Article 142 of the Revised Penal Code as amended by Presidential Decree No. 1835;" (p. 22, Rollo)

and, the affidavit of Lt. Ignacio reads, among others —

"x x the said periodical published by Rommel Corro, contains articles tending to incite distrust and hatred for the Government of the Philippines or any of its duly constituted authorities." (p. 23, Rollo)

The above statements are mere conclusions of law and will not satisfy the requirements of probable cause. They can not serve as basis for the issuance of search warrant, absent of the existence of probable cause. In fact, as a consequence of the search warrant issued, the items confiscated from the premises of the office of the Philippine Times at 610 Mezzanine Floor, Gochengco Bldg., T. M. Kalaw, Ermita, Manila were the following:

1. One bundle of assorted negative;
2. One bundle of assorted lay out;
3. Three folders of assorted articles/writings used by Philippine Times news and other paraphernalias;
4. Four tape —alleged speech of Mayor Climaco, two alleged speeches of Aquino and a speech of one various artist;
5. One bundle Dummies;
6.
Ten bundles of assorted copies of Philippine Times issued on different dates (Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14 & 15);
7. One Typewriter Remington Brand Long Carriage with No. J 2479373;
8. One Typewriter Adler-short with No. 9003011;
9. Three (3) bundles of Philippine Times latest issue for Baguio City (p. 26, Rollo)

In *Stonehill vs. Diokno*, 20 SCRA 383, this Court held that search warrants authorizing the seizure of books of accounts and records "showing all the business trans-actions" of certain persons, regardless of whether the transactions were legal or illegal, contravene the explicit comment of the Bill of Rights that the things to be seized should be particularly described and defeat its major objective of eliminating general warrants. In the case at bar, the search warrant issued by respondent judge allowed seizure of printed copies of the Philippine Times, manuscripts/drafts of articles for publication, newspaper dummies, subversive documents, articles, etc., and even typewriters, duplicating machines, mimeographing and tape recording machines. Thus, the language used is so all embracing as to include all conceivable records and equipment of petitioner regardless of whether they are legal or illegal. The search warrant under consideration was in the nature of a general warrant which is constitutionally objectionable.

Respondents do not deny the fact that the business office of the "Philippine Times" of which petitioner was the publisher-editor was padlocked and sealed. The consequence is, the printing and publication of said newspaper were discontinued. In *Burgos, Sr. vs. Chief of Staff of the Armed Forces of the Philippines*, supra, We held that "[s]uch closure is in the nature of previous restraint or censorship abhorrent to the freedom of the press guaranteed under the fundamental law, 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."

Finally, respondents argue that while the search warrant was issued on September 29, 1983 and was executed on the very same day, it was only on November 6, 1984, or one (1) year, one (1) month and six (6) days when petitioner filed his motion for the recall of the warrant and the return of the documents/personal properties. Having failed to act seasonably, respondents claim that petitioner is guilty of laches.

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier. The 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 (*Tijam vs. Sibonghanoy*, L-21450, April 15, 1968, 23 SCRA 35).

In his petition, Corro alleged that on October 1, 1983, less than forty-two (42) hours after the military operatives shut down his newspaper on September 29, 1983, he was invited by the Director/General PC/INP, and subsequently detained. Thereafter, he was charged with the crime of inciting to sedition before the City Fiscal's Office in Quezon City, and on October 7, 1983, a preventive detention action was served upon him. Consequently, he had to file a petition for habeas corpus. It was only on November 8, 1984 when this Court issued its Resolution in G. R. No. 68976, entitled: *In the Matter of the Petition for Habeas Corpus of Rommel Corro; Angie Corro vs. Minister Juan Ponce Enrile, et al.*, releasing Rommel Corro on recognizance of his lawyers, Attys. Humberto B. Basco, Reynaldo Bagatsing and Edilberto Balce. In the same month, November 1984, petitioner filed his motion to recall warrant and to return the seized documents. When respondent judge denied the motion, he came to Us.

Considering the above circumstances, the claim that petitioner had abandoned his right to the possession of the seized properties is incorrect.

WHEREFORE, Search Warrant No. Q-00002 issued by the respondent judge on September 29, 1983 is declared null and void and, accordingly, SET ASIDE.

The prayer for a writ of mandatory injunction for the return of the seized articles is GRANTED and all properties seized thereunder are hereby ordered RELEASED to petitioner. Further, respondents Lt. Col. Berlin A. Castillo and 1st Lt. Godofredo M. Ignacio are ordered to RE-OPEN the padlocked office premises of the Philippine Times at 610 Mezzanine Floor, Gochengco Bldg., T. M. Kalaw, Ermita, Manila.

SO ORDERED.

Teehankee, Makasiar, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De La Fuente, Cuevas, and Alampay, JJ., concur.

Fernando, C.J., in the result.

Aquino, J., no part.

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