

JOSEFINO ROAN, PETITIONER, VS. THE HONORABLE ROMULO T. GONZALES, PRESIDING JUDGE, REGIONAL TRIAL COURT OF MARINDUQUE, BRANCH XXXVIII; THE PROVINCIAL FISCAL OF MARINDUQUE; THE PR...

G.R. No. 71410. November 25, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

Once again we are asked to annul a search warrant on the ground that it violates the Constitution. As we can do no less if we are to be true to the mandate of the fundamental law, we do annul.

One of the most precious rights of the citizen in a free society is the right to be left alone in the privacy of his own house. That right has ancient roots, dating back through the mists of history to the mighty English kings in their fortresses of power. Even then, the lowly subject had his own castle where he was monarch of all he surveyed. This was his humble cottage from which he could bar his sovereign lord and all the forces of the Crown.

That right has endured through the ages albeit only in a few libertarian regimes. Their number, regrettably, continues to dwindle against the onslaughts of authoritarianism. We are among the fortunate few, able again to enjoy this right after the ordeal of the past despotism. We must cherish and protect it all the more now because it is like a prodigal son returning.

That right is guaranteed in the following provisions of Article IV of the 1973 Constitution:

"SEC. 3. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, 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.

"SEC. 4. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety and order require otherwise.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

Invoking these provisions, the petitioner claims he was the victim of an illegal search and seizure conducted by the military authorities. The articles seized from him are sought to be used as evidence in his prosecution for illegal possession of firearms. He asks that their admission be temporarily restrained (which we have)[1] and thereafter permanently enjoined.

The challenged search warrant was issued by the respondent judge on May 10, 1984.[2] The petitioner's house

was searched two days later but none of the articles listed in the warrant was discovered.[3] However, the officers conducting the search found in the premises one Colt Magnum revolver and eighteen live bullets which they confiscated. They are now the bases of the charge against the petitioner.[4]

To be valid, a search warrant must be supported by probable cause to be determined by the judge or some other authorized officer after examining the complainant and the witnesses he may produce. No less important, there must be a specific description of the place to be searched and the things to be seized, to prevent arbitrary and indiscriminate use of the warrant.[5]

Probable cause was described by Justice Escolin in *Burgos v. Chief of Staff*[6] as referring to "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." As held in a long line of decisions, the probable cause must refer to only one specific offense.[7]

The inclusion of the requirement for the "examination under oath or affirmation of the complainant and the witnesses he may produce" was a refinement proposed by Delegate Vicente J. Francisco in the 1934 Constitutional Convention. His purpose was the strengthening of the guaranty against unreasonable searches and seizures. Although the condition did not appear in the corresponding provision of the federal Constitution of the United States which served as our model, it was then already embodied in the Code of Criminal Procedure. Nevertheless, Delegate Jose P. Laurel, Chairman of the Committee on the Bill of Rights of that body, readily accepted the proposal and it was thereafter, following a brief debate, approved by the Convention.[8]

Implementing this requirement, the Rules of Court provided in what was then Rule 126:

"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 depositions in writing, and attach them to the record, in addition to any affidavits presented to him."

The petitioner claims that no depositions were taken by the respondent judge in accordance with the above rule, but this is not entirely true. As a matter of fact, depositions were taken of the complainant's two witnesses in addition to the affidavit executed by them.[9] It is correct to say, however, that the complainant himself was not subjected to a similar interrogation.

Commenting on this matter, the respondent judge declared:

"The truth is that when PC Capt. Mauro P. Quillosa personally filed his application for a search warrant on May 10, 1984, he appeared before me in the company of his two (2) witnesses, Esmael Morada and Jesus Tohilida, both of whom likewise presented to me their respective affidavits taken by Pat. Josue V. Lining, a police investigator assigned to the PC-INP command at Camp Col. Maximo Abad. As the application was not yet subscribed and sworn to, I proceeded to examine Captain Quillosa on the contents thereof to ascertain, among others, if he knew and understood the same. Afterwards, he subscribed and swore to the same before me." [10]

By his own account, all he did was question Captain Quillosa on the contents of his affidavit only "to ascertain, among others, if he knew and understood the same," and only because "the application was not yet subscribed and sworn to." The suggestion is that he would not have asked any questions at all if the affidavit had already been completed when it was submitted to him. In any case, he did not ask his own searching questions. He limited himself to the contents of the affidavit. He did not take the applicant's deposition in writing and attach them to the record, together with the affidavit presented to him.

As this Court held in *Mata v. Bayona*: [11]

"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 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, 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 respondent judge also declared that he "saw no need to have applicant Quillosa's deposition taken considering that he was applying for a search warrant on the basis of the information provided by the aforementioned witnesses whose depositions as aforementioned had already been taken by the undersigned." [12]

In other words, the applicant was asking for the issuance of the search warrant on the basis of mere hearsay and not of information personally known to him, as required by settled jurisprudence. [13] The rationale of the requirement, of course, is to provide a ground for a prosecution for perjury in case the applicant's declarations are found to be false. His application, standing alone, was insufficient to justify the issuance of the warrant sought. It was therefore necessary for the witnesses themselves, by their own personal information, to establish the applicant's claims. [14]

Even assuming then that it would have sufficed to take the depositions only of the witnesses and not of the applicant himself, there is still the question of the sufficiency of their depositions.

It is axiomatic that the examination must be probing and exhaustive, not merely routinary or pro forma, if the claimed probable cause is to be established. The examining magistrate must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application. [15]

A study of the depositions taken from witnesses Esmael Morada and Jesus Tohilida, who both claimed to be "intelligence informers," shows that they were in the main a mere restatement of their allegations in their affidavits, except that they were made in the form of answers to the questions put to them by the respondent judge. Significantly, the meaningful remark made by Tohilida that they were suspicious of the petitioner because he was a follower of the opposition candidate in the forthcoming election (a "Lecarista") [16] did not excite the respondent judge's own suspicions. This should have put him on guard as to the motivations of the witnesses and alerted him to possible misrepresentations from them.

The respondent judge almost unquestioningly received the witnesses' statement that they saw eight men deliver arms to the petitioner in his house on May 2, 1984. [17] This was supposedly done overtly, and Tohilida said he saw everything through an open window of the house while he was near the gate. [18] He could even positively state that six of the weapons were .45 caliber pistols and two were .38 caliber revolvers. [19]

One may well wonder why it did not occur to the respondent judge to ask how the witness could be so certain even as to the caliber of the guns, or how far he was from the window, or whether it was on the first floor or a second floor, or why his presence was not noticed at all, or if the acts related were really done openly in the full view of the witnesses, considering that these acts were against the law. These would have been judicious questions but they were injudiciously omitted. Instead, the declarations of the witnesses were readily accepted and the search warrant sought was issued forthwith.

The above-discussed defects have rendered the search warrant invalid. Nonetheless, the Solicitor General argues that whatever defect there was, was waived when the petitioner voluntarily submitted to the search and manifested his conformity in writing. [20]

We do not agree. What we see here is pressure exerted by the military authorities, who practically coerced the petitioner to sign the supposed waiver as a guaranty against a possible challenge later to the validity of the search they were conducting. Confronted with the armed presence of the military and the presumptive authority of a judicial writ, the petitioner had no choice but to submit. This was not, as we held in a previous case,[21] the manifestation merely of our traditional Filipino hospitality and respect for authority. Given the repressive atmosphere of the Marcos regime, there was here, as we see it, an intimidation that the petitioner could not resist.

The respondents also argue that the Colt Magnum pistol and the eighteen live bullets seized from the petitioner were illegal per se and therefore could have been taken by the military authorities even without a warrant. Possession of the said articles, it is urged, was violative of P.D. 1866 and considered *malum prohibitum*. Hence, the illegal articles could be taken even without a warrant.

Prohibited articles may be seized but only as long as the search is valid. In this case, it was not because: 1) there was no valid search warrant; and 2) absent such a warrant, the right thereto was not validly waived by the petitioner. In short, the military officers who entered the petitioner's premises had no right to be there and therefore had no right either to seize the pistol and bullets.

It does not follow that because an offense is *malum prohibitum*, the subject thereof is necessarily illegal per se. Motive is immaterial in *mala prohibita*, but the subjects of this kind of offense may not be summarily seized simply because they are prohibited. A search warrant is still necessary. If the rule were otherwise, then the military authorities could have just entered the premises and looked for the guns reportedly kept by the petitioner without bothering to first secure a search warrant. The fact that they did bother to do so indicates that they themselves recognized the necessity of such a warrant for the seizure of the weapons the petitioner was suspected of possessing.

It is true that there are certain instances when a search may be validly made without warrant and articles may be taken validly as a result of that search. For example, a warrantless search may be made incidental to a lawful arrest,[22] as when the person being arrested is frisked for weapons he may otherwise be able to use against the arresting officer. Motor cars may be inspected at borders to prevent smuggling of aliens and contraband[23] and even in the interior upon a showing of probable cause.[24] Vessels and aircraft are also traditionally removed from the operation of the rule because of their mobility and their relative ease in fleeing the state's jurisdiction.[25] The individual may knowingly agree to be searched or waive objections to an illegal search.[26] And it has also been held that prohibited articles may be taken without warrant if they are open to eye and hand and the peace officer comes upon them inadvertently.[27]

Clearly, though, the instant case does not come under any of the accepted exceptions. The respondents cannot even claim that they stumbled upon the pistol and bullets for the fact is that these things were deliberately sought and were not in plain view when they were taken. Hence, the rule having been violated and no exception being applicable, the conclusion is that the petitioner's pistol and bullets were confiscated illegally and therefore are protected by the exclusionary principle.

Stonehill v. Diokno established this rule which was later expressly affirmed in the 1973 Constitution. While conceding that there may be occasions when the criminal might be allowed to go free because "the constable has blundered," Chief Justice Concepcion observed that the exclusionary rule was nonetheless "the only practical means of enforcing the constitutional injunction" against abuse. The decision cited Judge Learned Hand's justification that "only in case the prosecution which itself controls the seizing officials, know that it cannot profit by their wrong, will the wrong be repressed."

The pistol and bullets cannot, of course, be used as evidence against the petitioner in the criminal action against

him for illegal possession of firearms. Pending resolution of that case, however, the said articles must remain in custodia legis.

Finally, it is true that the petitioner should have, before coming to this Court, filed a motion for the quashal of the search warrant by the respondent judge in accordance with the normal procedure. But as we said and did in Burgos, "this procedural flaw notwithstanding, we take cognizance of this petition in view of the seriousness and urgency of the constitutional issues raised." [28]

WHEREFORE, Search Warrant No. 1-84 issued by the respondent judge on May 10, 1984, is hereby declared null and void and accordingly set aside. Our restraining order of August 6, 1985, is made permanent. No costs.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Melencio-Herrera, Alampay, Gutierrez, Jr., and Paras, JJ., concur.
Narvasa, J., concurs in the result.
Feliciano, J., in the result.

[1] Rollo, pp. 21, 77-79.

[2] Ibid., pp. 4, 23.

[3] Id., p. 5.

[4] Annex "N", Petition.

[5] Sec. 3, Art. IV, 1974 Constitution; Sec. 3, Rule 126, Rules of Court; Stonehill v. Diokno, 20 SCRA 383; Lim v. Ponce de Leon, 66 SCRA 299; Uy Kheylin v. Villareal, 42 Phil. 886; People v. Veloso, 48 Phil. 169; People v. Rubio, 57 Phil. 384; Bache & Co. (Phil.), Inc. v. Ruiz, 37 SCRA 823.

[6] 133 SCRA 800.

[7] Stonehill v. Diokno, supra; Asian Surety & Insurance Co. Inc. v. Herrera, 54 SCRA 312; Castro v. Pabalan, 70 SCRA 477; Secretary of Justice v. Marcos, 76 SCRA 301; Oca v. Maiquez, 14 SCRA 735.

[8] Journal of the Constitutional Convention, Vol. III, No. 22, pp. 1098-1105.

[9] Rollo, pp. 102, 116-121.

[10] Ibid., pp. 101-102.

[11] 128 SCRA 388, 391.

[12] Rollo, p. 102.

[13] Alvarez v. CFI, 64 Phil. 33; Rodriguez v. Villamiel, 65 Phil. 230; Garcia v. Locsin, 65 Phil. 689; Burgos v. Chief of Staff, supra.

[14] People v. Sy Juco, 64 Phil. 667; Rodriguez v. Villamiel, supra; Alvarez v. CFI, supra.

[15] Mata v. Bayona, supra; cf. Sec. 4, Rule 126, Rules of Court.

[16] Rollo, pp. 119-120.

[17] Ibid., pp. 26, 27, 117, 120.

[18] Id., p. 120.

[19] id.

[20] Ibid., pp. 145, 151, 152.

[21] Magoncia v. Palacio, 80 Phil. 770.

[22] Section 12, Rule 126, Rules of Court.

[23] Carroll v. U.S., 267 U.S. 132, cited in Papa v. Mago, 22 SCRA 857; People v. CFI of Rizal, 101 SCRA 86.

[24] Almeida-Sanchez v. U.S., 37 L. ed. 2ed. 596.

[25] Roldan v. Arca, 65 SCRA 336; Papa v. Mago, supra.

[26] People vs. Malasigui, 63 Phil. 221.

[27] Harris v. U.S., 390 U.S. 234.

[28] Supra.

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