

DR. NEMESIO E. PRUDENTE, PETITIONER, VS. THE HON. EXECUTIVE JUDGE ABELARDO M. DAYRIT, RTC MANILA, BRANCH 33 AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 82870, December 14, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari to annul and set aside the order of respondent Judge dated 9 March 1988 which denied the petitioner's motion to quash Search Warrant No. 87-14, as well as his order dated 20 April 1988 denying petitioner's motion for reconsideration of the earlier order.

It appears that on 31 October 1987, P/Major Alladin Dimagmaliw, Chief of the Intelligence Special Action Division (ISAD) of the Western Police District (WPD), filed with the Regional Trial Court (RTC) of Manila, Branch 33, presided over by respondent Judge Abelardo Dayrit, now Associate Justice of the Court of Appeals, an application[1] for the issuance of a search warrant, docketed therein as SEARCH WARRANT NO. 87-14, for VIOLATION OF PD NO. 1866 (Illegal Possession of Firearms, etc.), entitled "People of the Philippines, Plaintiff, versus Nemesio E. Prudente, Defendant."

In his application for search warrant, P/Major Alladin Dimagmaliw alleged, among others, as follows:

"1. That he has been informed and has good and sufficient reasons to believe that NEMESIO PRUDENTE who may be found at the Polytechnic University of the Philippines, Anonas St., Sta. Mesa, Sampaloc, Manila has in his control or possession firearms, explosives, handgrenades and ammunition which are illegally possessed or intended to be used as the means of committing an offense which the said NEMESIO PRUDENTE is keeping and concealing at the following premises of the Polytechnic University of the Philippines, to wit:

- a. Offices of the Department of Military Science and Tactics at the ground floor and other rooms at the ground floor;
- b. Office of the President, Dr. Nemesio Prudente at PUP, Second Floor and other rooms at the second floor;

"2. That the undersigned has verified the report and found it to be a fact, and therefore, believes that a Search Warrant should be issued to enable the undersigned or any agent of the law to take possession and bring to this Honorable Court the following described properties:

- a. M 16 Armalites with ammunitions;
- b. .38 and .45 Caliber handguns and pistols;
- c. explosives and handgrenades; and,
- d. assorted weapons with ammunitions."

In support of the application for issuance of search warrant, P/Lt. Florenio C. Angeles, OIC of the Intelligence Section of ISAD, executed a "Deposition of Witness"[2] dated 31 October 1987, subscribed and sworn to before respondent Judge. In his deposition, P/Lt. Florenio Angeles declared, inter alia, as follows:

"2. Q: Do you know P/Major Alladin Dimagmaliw, the applicant for a Search Warrant?

A: Yes, sir, he is the Chief, Intelligence and Special Action Division, Western Police District.

"3. Q: Do you know the premises of Polytechnic University of the Philippines at Anonas St., Sta. Mesa, Sampaloc, Manila?

A: Yes sir, the said place has been the subject of our surveillance and observation during the past few days.

"4. Q: Do you have personal knowledge that in the said premises is kept the following properties subject of the offense of violation of PD No. 1866 or intended to be used as a means of committing an offense:

- a. M 16 Armalites with ammunition;
- b. .38 and .45 Caliber handguns and pistols;
- c. explosives and handgrenades; and
- d. Assorted weapons with ammunition?

A: Yes sir.

"5. Q: Do you know who is or who are the person or persons who has or have control of the above-described premises?

A: Yes sir, it is Dr. Nemesio Prudente, President of the Polytechnic University of the Philippines.

"6. Q: How do you know that said property is subject of the offense of violation of Pres. Decree No. 1866 or intended to be used as the means of committing an offense?

A: Sir, as a result of our continuous surveillance conducted for several days, we gathered information from verified sources that the holder of said firearms and explosives as well as ammunitions aren't licensed to possess said firearms and ammunition. Further, the premises is a school and the holders of these firearms are not students who were not supposed to possess firearms, explosives and ammunition."

On the same day, 31 October 1987, respondent Judge issued Search Warrant No. 87-14,[3] the pertinent portions of which read as follows:

"It appearing to the satisfaction of the undersigned, after examining under oath applicant ALLADIN M. DIMAGMALIW and his witness FLORENIO C. ANGELES that there are good and sufficient reasons to believe (probable cause) that NEMESIO PRUDENTE has in his control in the premises of Polytechnic University of the Philippines, Anonas St., Sta. Mesa, Sampaloc, Manila, properties which are subject of the above offense or intended to be used as the means of committing the said offense.

"You are hereby commanded to make an immediate search at any time in the day or night of the premises of Polytechnic University of the Philippines, more particularly (a) offices of the Department of Military Science and Tactics at the ground floor and other rooms at the ground floor; (b) office of the President, Dr. Nemesio Prudente at PUP, Second Floor and other rooms at the second floor, and forthwith seize and take possession of the following personal properties, to wit:

- a. M 16 Armalites with ammunition;
- b. .38 and .45 Caliber handguns and pistols;

- c. explosives and hand grenades; and
- d. assorted weapons with ammunitions.

and bring the above described properties to the undersigned to be dealt with as the law directs."

On 1 November 1987, a Sunday and All Saints Day, the search warrant was enforced by some 200 WPD operatives led by P/Col. Edgar Dulla Torre, Deputy Superintendent, WPD, and P/Major Romeo Maganto, Precinct 8 Commander.

In his affidavit,[4] dated 2 November 1987, Ricardo Abando y Yusay, a member of the searching team, alleged that he found in the drawer of a cabinet inside the wash room of Dr. Prudente's office a bulging brown envelope with three (3) live fragmentation hand grenades separately wrapped with old newspapers, classified by P/Sgt. J.L. Cruz as follows: (a) one (1) pc. - M33 Fragmentation hand grenade (live); (b) one (1) pc. - M26 Fragmentation hand grenade (live); and (c) one (1) pc. - PRB-423 Fragmentation hand grenade (live).

On 6 November 1987, petitioner moved to quash the search warrant. He claimed that (1) the complainant's lone witness, Lt. Florenio C. Angeles, had no personal knowledge of the facts which formed the basis for the issuance of the search warrant; (2) the examination of the said witness was not in the form of searching questions and answers; (3) the search warrant was a general warrant, for the reason that it did not particularly describe the place to be searched and that it failed to charge one specific offense; and (4) the search warrant was issued in violation of Circular No. 19 of the Supreme Court in that the complainant failed to allege under oath that the issuance of the search warrant on a Saturday was urgent.[5]

The applicant, P/Major Alladin Dimagmaliw, thru the Chief, Inspectorate and Legal Affairs Division, WPD, opposed the motion.[6] After petitioner had filed his reply[7] to the opposition, he filed a supplemental motion to quash.[8]

Thereafter, on 9 March 1988, respondent Judge issued an order,[9] denying the petitioner's motion and supplemental motion to quash. Petitioner's motion for reconsideration[10] was likewise denied in the order[11] dated 20 April 1988.

Hence, the present recourse, petitioner alleging that respondent Judge has decided a question of substance in a manner not in accord with law or applicable decisions of the Supreme Court, or that the respondent Judge gravely abused his discretion tantamount to excess of jurisdiction, in issuing the disputed orders.

For a valid search warrant to issue, there must be probable cause, which is to be determined personally by the judge, 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.[12] The probable cause must be in connection with one specific offense,[13] and the judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and any witness he may produce, on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted.[14]

The "probable cause" for a valid search warrant, has been 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 objects sought in connection with the offense are in the place sought to be searched." [15] This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay.[16]

Petitioner assails the validity of Search Warrant No. 87-14 on the ground that it was issued on the basis of facts

and circumstances which were not within the personal knowledge of the applicant and his witness but based on hearsay evidence.

In his application for search warrant, P/Major Alladin Dimagmaliw stated that "he has been informed" that Nemesio Prudente "has in his control and possession" the firearms and explosives described therein, and that he "has verified the report and found it to be a fact." On the other hand, in his supporting deposition, P/Lt. Florenio C. Angeles declared that, as a result of their continuous surveillance for several days, they "gathered informations from verified sources" that the holders of the said fire arms and explosives are not licensed to possess them. In other words, the applicant and his witness had no personal knowledge of the facts and circumstances which became the basis for issuing the questioned search warrant, but acquired knowledge thereof only through information from other sources or persons.

While it is true that in his application for search warrant, applicant P/Major Dimagmaliw stated that he verified the information he had earlier received that petitioner had in his possession and custody the firearms and explosives described in the application, and that he found it to be a fact, yet there is nothing in the record to show or indicate how and when said applicant verified the earlier information acquired by him as to justify his conclusion that he found such information to be a fact. He might have clarified this point if there had been searching questions and answers, but there were none. In fact, the records yield no questions and answers, whether searching or not vis-a-vis the said applicant.

What the records show is the deposition of witness, P/Lt. Angeles, as the only support to P/Major Dimagmaliw's application, and the said deposition is based on hearsay. For, it avers that they (presumably, the police authorities) had conducted continuous surveillance for several days of the suspected premises and, as a result thereof, they "gathered information from verified sources" that the holders of the subject firearms and explosives are not licensed to possess them.

In *Alvarez vs. Court of First Instance*,^[17] this Court laid the following test in determining whether the allegations in an application for search warrant or in a supporting deposition, are based on personal knowledge or not -

"The true test of sufficiency of a deposition or affidavit to warrant issuance of a search warrant is whether it has been drawn in a manner that perjury could be charged thereon and the affiant be held liable for damage caused. The oath required must refer to the truth of the facts within the personal knowledge of the applicant for search warrant, and/or his witnesses, not of the facts merely reported by a person whom one considers to be reliable."

Tested by the above standard, the allegations of the witness, P/Lt. Angeles, in his deposition, do not come up to the level of facts of his personal knowledge so much so that he cannot be held liable for perjury for such allegations in causing the issuance of the questioned search warrant.

In the same *Alvarez* case,^[18] the applicant stated that his purpose for applying for a search warrant was that: "It had been reported to me by a person whom I consider to be reliable that there are being kept in said premises books, documents, receipts, lists, chits and other papers used by him in connection with his activities as a money lender, charging usurious rate of interests, in violation of law." The Court held that this was insufficient for the purpose of issuing a search warrant.

In *People vs. Sy Juco*,^[19] where the affidavit contained an allegation that there had been a report to the affiant by a person whom he considered reliable that in said premises were "fraudulent books, correspondence and records," this was likewise held as not sufficient for the purpose of issuing a search warrant.

Evidently, the allegations contained in the application of P/Major Alladin Dimagmaliw and the declaration of

P/Lt. Florenio C. Angeles, in his deposition were insufficient basis for the issuance of a valid search warrant. As held in the Alvarez case:

"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."

Besides, respondent Judge did not take the deposition of the applicant as required by the Rules of Court. As held in *Roan v. Gonzales*,^[20] "(m)ere 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."

Moreover, a perusal of the deposition of P/Lt. Florenio Angeles shows that it was too brief and short. Respondent Judge did not examine him "in the form of searching questions and answers." On the contrary, the questions asked were leading as they called for a simple "yes" or "no" answer. As held in *Quintero vs. NBI*,^[21] "the questions propounded by respondent Executive Judge to the applicant's witness are not sufficiently searching to establish probable cause. Asking of leading questions to the deponent in an application for search warrant, and conducting of examination in a general manner, would not satisfy the requirements for issuance of a valid search warrant."

Manifestly, in the case at bar, the evidence failed to show the existence of probable cause to justify the issuance of the search warrant. The Court also notes post facto that the search in question yielded, no armalites, handguns, pistols, assorted weapons or ammunitions, as stated in the application for search warrant, the supporting deposition, and the search warrant itself. Only three (3) live fragmentation hand grenades were found in the searched premises of the PUP, according to the affidavit of an alleged member of the searching party.

The Court avails of this decision to reiterate the strict requirements for determination of "probable cause" in the valid issuance of a search warrant, as enunciated in earlier cases. True, these requirements are stringent but the purpose is to assure that the constitutional right of the individual against unreasonable search and seizure shall remain both meaningful and effective.

Petitioner also assails the validity of the search warrant on the ground that it failed to particularly describe the place to be searched, contending that there were several rooms at the ground floor and the second floor of the PUP.

The rule is, that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended.^[22] In the case at bar, the application for search warrant and the search warrant itself described the place to be searched as the premises of the Polytechnic University of the Philippines, located at Anonas St., Sta Mesa, Sampaloc, Manila, more particularly, the offices of the Department of Military Science and Tactics at the ground floor, and the Office of the President, Dr. Nemesio Prudente, at PUP, Second Floor and other rooms at the second floor. The designation of the places to be searched sufficiently complied with the constitutional injunction that a search warrant must particularly describe the place to be searched, even if there were several rooms at the ground floor and second floor of the PUP.

Petitioner next attacks the validity of the questioned warrant, on the ground that it was issued in violation of the rule that a search warrant can be issued only in connection with one specific offense. The search warrant issued by respondent judge, according to petitioner, was issued without any reference to any particular provision of PD No. 1866 that was violated - when allegedly P.D. No. 1866 punishes several offenses.

In *Stonehill vs. Diokno*,^[23] where the warrants involved were issued upon applications stating that the natural and juridical persons therein named had committed a "violation of Central Bank Laws, Tariff and Customs Laws,

Internal Revenue Code and Revised Penal Code," the Court held that no specific offense had been alleged in the applications for a search warrant, and that it would be a legal heresy of the highest order to convict anybody of a "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue Code and Revised Penal Code" without reference to any determinate provision of said laws and codes.

In the present case, however, the application for search warrant was captioned: "For Violation of PD No. 1866 (Illegal Possession of Firearms, etc.)." While the said decree punishes several offenses, the alleged violation in this case was, qualified by the phrase "illegal possession of firearms, etc." As explained by respondent Judge, the term "etc." referred to ammunitions and explosives. In other words, the search warrant was issued for the specific offense of illegal possession of firearms and explosives. Hence, the failure of the search warrant to mention the particular provision of PD No. 1866 that was violated is not of such a gravity as to call for its invalidation on this score.

Besides, while illegal possession of firearms is penalized under Section 1 of PD No. 1866 and illegal possession of explosives is penalized under Section 3, thereof, it cannot be overlooked that said decree is a codification of the various laws on illegal possession of firearms, ammunitions and explosives: such illegal possessions of items destructive of life and property are related offenses or belong to the same species, as to be subsumed within the category of illegal possession of firearms, etc. under P.D. No. 1866. As observed by respondent Judge:[24]

"The grammatical syntax of the phraseology comparative with the title of PD 1866 can only mean that illegal possession of firearms, ammunitions and explosives, have been codified under Section 1 of said Presidential Decree so much so that the second and third are forthrightly species of illegal possession of firearms under Section (1) thereof. It has long been a practice in the investigative and prosecution arm of the government, to designate the crime or illegal possession of firearms, ammunitions and explosives as 'illegal possession of firearms, etc.' The Constitution as well as the Rules of Criminal Procedure does not recognize the issuance of one search warrant for illegal possession of firearms, one warrant for illegal possession of ammunitions, and another for illegal possession of explosives. Neither is the filing of three different informations for each of the above offenses sanctioned by the Rules of Court. The usual practice adopted by the courts is to file a single information for illegal possession of firearms and ammunitions. This practice is considered to be in accordance with Section 13, Rule 110 of the 1985 Rules on Criminal Procedure which provides that: 'A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses. Describably, the servers did not search for articles other than firearms, ammunitions and explosives. The issuance of Search Warrant No. 87-14 is deemed profoundly consistent with said rule and is therefore valid and enforceable." (emphasis supplied)

Finally, in connection with the petitioner's contention that the failure of the applicant to state, under oath, the urgent need for the issuance of the search warrant, his application having been filed on a Saturday, rendered the questioned warrant invalid for being violative of this Court's Circular No. 19, dated 14 August 1987, which reads:

"3. Applications filed after office hours, during Saturdays, Sundays and holidays shall likewise be taken cognizance of and acted upon by any judge of the court having jurisdiction of the place to be searched, but in such cases the applicant shall certify, and state the facts under oath, to the satisfaction of the judge, that the issuance is urgent."

it would suffice to state that the above section of the circular merely provides for a guideline, departure from which would not necessarily affect the validity of an otherwise valid search warrant.

WHEREFORE, all the foregoing considered, the petition is GRANTED. The questioned orders dated 9 March 1988 and 20 April 1988 as well as Search Warrant No. 87-14 are hereby ANNULLED and SET ASIDE.

The three (3) live fragmentation hand grenades which, according to Ricardo Y. Abando, a member of the

searching team, were seized in the washroom of petitioner's office at the PUP, are ordered delivered to the Chief, Philippine Constabulary for proper disposition.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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- [1] Annex "A", Rollo, p. 24
- [2] Annex "B", Rollo, p. 26
- [3] Annex "C", Rollo, p. 28
- [4] Annex "D", Rollo, p. 29
- [5] Rollo, p. 52
- [6] Annex "E", Rollo, p. 30
- [7] Annex "F", Rollo, p. 33
- [8] Annex "G-1", Rollo, p. 42
- [9] Annex "H", Rollo, p. 51
- [10] Annex "I", Rollo, p. 64
- [11] Annex "J", Rollo, p. 72
- [12] Sec. 2, Art. III, 1987 Constitution
- [13] Sec. 3, Rule 126, Rules of Court
- [14] Sec. 4, Rule 126, Rules of Court
- [15] Quintero vs. NBI, et al., G.R. No. L-35149, 23 June 1988; 20th Century Fox Film Corporation vs. CA, et al., G.R. Nos. 76649-51, 19 August 1988
- [16] People vs. Sy Juco, 64 Phil. 667; Alvarez vs. CFI, 64 Phil. 33; US vs. Addison, 28 Phil. 566
- [17] Supra.
- [18] Supra.
- [19] Supra.
- [20] G.R. No. 71410, 25 November 1986, 145 SCRA 694
- [21] Supra.
- [22] People vs. Veloso, 48 Phil. 169, 180.
- [23] 20 SCRA 383, L-19550, 19 June 1967
- [24] Annex "H", Rollo, p. 59

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