

**ERLE PENDON, FOR HIMSELF AND AS MANAGING PARTNER OF
KENER TRADING COMPANY, PETITIONER, VS. THE COURT OF
APPEALS, HON. ENRIQUE T. JOCSON, IN HIS CAPACITY AS
PRESIDING JUDGE OF BR...**

G.R. No. 84873. November 16, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for review on certiorari seeks to set aside the decision (pp. 38-42, Rollo) of respondent Court of Appeals which affirmed the orders dated August 24, 1987 (p. 43, Record) and October 14, 1987 (pp. 53-54, Record) of the Regional Trial Court of Negros Occidental in Criminal Case No. 5657.

On February 4, 1987, First Lieutenant Felipe L. Rojas, Officer-in-Charge of the Philippine Constabulary-Criminal Investigation Service (PC-CIS), Bacolod City, filed an application for a search warrant, alleging:

“x x x.

“That he was informed and verily believes that KENNETH SIAO who may be found at KENER TRADING located at Rizal Street corner Lacson Street, Bacolod City has/have in her/his/their possession and control the following property/ies, to wit:

“NAPOCOR Galvanized bolts, grounding motor drive assembly; aluminum wires and other NAPOCOR Tower parts and line accessories

which he/she/they is/are concealing in the premises above mentioned.

“The undersigned has verified the report and found it to be the fact and has therefore reasons to believe that a SEARCH WARRANT should be issued to enable the undersigned or any agent of the law to take possession and bring the following described property/ies, to wit:

“NAPOCOR Galvanized bolts; grounding motor drive assembly; aluminum wires and other NAPOCOR Tower parts and line accessories.

“WHEREFORE, the undersigned prays this Honorable Court to issue a SEARCH WARRANT commanding any peace officer to search the premises/house described in this application and to seize and bring to this Honorable Court the person/property/ies above-mentioned to be dealt with as the law may direct.

Bacolod City, Philippines

Feb. 4, 1987 _____.

SGD. FELIPE L. ROJAS, JR.

1LT, PC

OIC, PFOCIS, Bacolod City”

(p. 18, Records)

The application was subscribed before Judge Demosthenes D. Magallanes of the Municipal Trial Court of Bacolod City and supported by the joint deposition of two (2) witnesses, Ignacio L. Reyes, an employee of NAPOCOR (National Power Corporation) and IAI Eduardo Abaja of the CIS of Bacolod City, quoted as follows:

“We, Ignacio L. Reyes and IAI Eduardo Abaja, CIS after having been duly sworn to, testify as follows:

“1. QUESTION: What are your names and other personal circumstances?

“ANSWER: IGNACIO L. REYES, 34 years old, married, an employee of NAPOCOR and presently residing at Erereco Subdivision, Bacolod City and AIA EDUARDO ABAJA, CIS, regular member of the CO/INP CIS Command, Bacolod City.

“2. QUESTION: Do you know the premises/house of KENNETH SIAO located at Rizal Street, near cor. Lacson St., Bacolod City?

“ANSWER: Yes, Sir.

“3. QUESTION: Do you have personal knowledge that said KENNETH SIAO who may be found in the said premises/house has/have in his/her/their possession and control the following property, to wit:

“NAPOCOR Galvanized bolts, grounding motor drive assembly, aluminum wires and other NAPOCOR Tower parts and line accessories?

“ANSWER: Yes, sir.

“4. QUESTION: How do you know that above-described property/ies is/are being kept in said premises/house?

“ANSWER: We conducted surveillance and we were able to purchase some of these items.

“IN WITNESS WHEREOF, we hereunto set our hands and affixed our signature this 4th day of Feb. 1987 at Bacolod City, Philippines.

“SGD. IGNACIO L. REYES SGD. EDUARDO J. ABAJA

Affiant Affiant

SUBSCRIBED AND SWORN to, before me this 4th day of Feb. 1987 at Bacolod City, Philippines.

SGD. DEMOSTHENES L. MAGALLANES

Judge

MUNICIPAL TRIAL COURT

BACOLOD CITY”

(p. 19, Record)

On the basis of the foregoing application and joint deposition, Judge Magallanes issued Search Warrant No. 181, commanding the search of the property described in the warrant.

Subsequently, constabulary officers stationed in Bacolod City conducted a search of the premises described in the search warrant and seized the following articles, to wit: 1) 272 kilos of galvanized bolts, V chuckle and U-bolts;

and 2) 3 and 1/2 feet angular bar. The receipt was signed by Digno Mamaril, Pc. Sergeant and marked “from Kenneth Siao” p. 21, Record).

A complaint for violation of the Anti-Fencing Law (P.D. 1612) was filed against Kenneth Siao with the office of the City Fiscal by the National Power Corporation. Thereafter, Siao filed a counter-affidavit alleging that he had previously relinquished all his rights and ownership over the Kener Trading to herein petitioner Erle Pendon. In a resolution (pp. 22-23, Record) dated May 18, 1987, the office of the City Fiscal recommended the dismissal of the complaint against Siao and the filing of a complaint for the same violation against petitioner. On the same day, a complaint (p. 24, Record) for Violation of the Anti-Fencing Law was filed against petitioner and docketed as Criminal Case No. 5657 of the Regional Trial Court of Negros Occidental. The case was raffled to Branch 47 of the same court presided over by respondent Judge Enrique T. Jocson.

Before his arraignment, petitioner filed on July 9, 1987, an application for the return of the articles seized by virtue of Search Warrant No. 181 (pp. 26-29, Record) on the ground that the said search warrant was illegally issued. The prosecuting fiscal filed an opposition to the application (pp. 31-32, Record). The application was subsequently amended to an application for quashal of the illegally-issued search warrant and for the return of the articles seized by virtue thereof (pp. 33-38, Records).

On August 24, 1987, respondent Judge Jocson issued an order impliedly denying the application for the quashal of the search warrant without ruling on the issue of the validity of the issuance thereof. The order states:

“Counsel for accused having admitted in the hearing in open court that at least one of the seized items bears the identifying mark of the complainant National Power Corporation, and there being no statement that the seized items were acquired in usual course of business for value, this court is constrained to have the case tried without resolving whether or not the questioned search warrant was issued validly.” (p. 43, Records)

A motion for reconsideration was filed by petitioner but it was denied on October 14, 1987 (p. 11, Rollo).

On October 20, 1987, petitioner filed with the Court of Appeals a petition for certiorari, prohibition and mandamus with a prayer for a restraining order, assailing the legality of search warrant No. 181 and praying for the permanent prohibition against the use in evidence of the articles and properties seized and the return thereof to petitioner. On April 4, 1988, respondent Court of Appeals dismissed the petition. The appellate court found the existence of a probable cause to justify the issuance of the search warrant. The respondent court held:

“x x x

“For reasons indicated, We hold that the evidence was sufficient to sustain the validity of the issuance of the Search Warrant No. 181 and to sustain further the ruling of the respondent trial court in denying the petition for the return of the articles and personal properties seized thereunder.

“WHEREFORE, this petition is hereby DISMISSED, with costs against petitioner. The previous order to maintain the status quo is hereby withdrawn and set aside.

“SO ORDERED.” (p. 41, Rollo)

The motion for reconsideration of the above decision filed by petitioner on May 2, 1988 was denied in a resolution (p. 49, Rollo) dated July 21, 1988.

The basic issue raised in this petition is the legality of the issuance of Search Warrant No. 181. It is the contention of petitioner that the application for the search warrant and the joint deposition of the witnesses miserably failed to fulfill the requirements prescribed by the Constitution and the rules.

The petitioner argues that the application of 1st Lt. Rojas and the joint deposition of Abaja and Reyes failed to

comply with the requisites of searching questions and answers. The joint deposition of the witnesses showed that the questions therein were pre-typed, mimeographed and the answers of the witnesses were merely filled-in. No examination of the applicant and of the joint deponents was personally conducted by Judge Magallanes as required by law and the rules.

Additionally, petitioner also contends that both the application of Rojas and the joint deposition of Abaya and Reyes show that neither of the affiants had personal knowledge that any specific offense was committed by petitioner or that the articles sought to be seized were stolen or that being so, they were brought to Kenneth Siao.

Lastly, the petitioner contends that, even assuming for the sake of polemics, that the articles belong to the latter, his Constitutional right prevails over that of NAPOCOR.

The right against unreasonable searches and seizures is guaranteed under Article 111 (Bill of Rights), Section 2 of the 1987 Constitution of the Philippines which provides:

“Sec. 2. 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 be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause 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.”

Under the above provision, the issuance of a search warrant is justified upon a finding of probable cause. Probable cause for a search 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 the objects sought in connection with the offense are in the place sought to be searched (*Burgos, Sr. v. Chief of Staff*, G.R. No. 64261, Dec. 26, 1984, 133 SCRA 800). In determining the existence of probable cause, it is required that: 1) the judge (or) officer must examine the ** witnesses personally; 2) the examination must be under oath; and (3) the examination must be reduced to writing in the form of searching questions and answers (*Marinas v. Sioco*, 104 SCRA 403, *Ponsica v. Ignalaga*, G.R. No. 72301, July 31, 1987, 152 SCRA 647). These requirements are provided under Section 4, Rule 126 of the New Rules of Criminal Procedure which states: “Sec. 4. Examination of complainant; record. - 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 the witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted.”

It has been ruled that the existence of probable cause depends to a large degree upon the finding or opinion of the judge conducting the examination (*Luna v. Plaza*, G.R. No. L-27511, Nov. 29, 1968), however, the opinion or finding of probable cause must, to a certain degree, be substantiated or supported by the record.

In this case, We find that the requirement mandated by the law and the rules that the judge must personally examine the applicant and his witnesses in the form of searching questions and answers before issuing the warrant, was not sufficiently complied with. The applicant himself was not asked any searching question by Judge Magallanes. The records disclose that the only part played by the applicant, Lieutenant Rojas was to subscribe the application before Judge Magallanes. The application contained pre-typed questions, none of which stated that applicant had personal knowledge of a robbery or a theft and that the proceeds thereof are in the possession and control of the person against whom the search warrant was sought to be issued. In the case of *Roan v. Gonzales*, G.R. No. 71410, Nov. 25, 1986, 145 SCRA 687, citing the case of *Mata v. Bayona*, G.R. No. 50720, March 26, 1984, 128 SCRA 388, where the applicant himself was not subjected to an interrogation but was questioned only “to ascertain, among others, if he knew and understood (his affidavit) and only because the application was not yet subscribed and sworn to,” We held that:

“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.’

“x x x

“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.”

(underscoring supplied; p. 695)

Likewise, the joint deposition made by the two (2) witnesses presented by the applicant can hardly satisfy the same requirement. The public respondent prosecutor admitted in his memorandum that the questions propounded were pre-typed.

The offense which petitioner was sought to be charged was violation of the anti-fencing law which punishes the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy or sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should have known to him, to have been derived from the proceeds of the crime of robbery or theft (Sec. 2a, P. D. 1612). The four (4) questions propounded could hardly support a finding of probable cause. The first question was on the personal circumstances of the deponents. The second and third were leading questions answerable by yes or no. The fourth question was on how the deponents knew about their answers in the second and third questions. The judge could have exploited this last question to convince himself of the existence of a probable cause but he did not. There was also no statement in the joint deposition that the articles sought to be seized were derived from the proceeds of the crime of robbery or a theft or that applicants have any knowledge that a robbery or theft was committed and the articles sought to be seized were the proceeds thereof. It was not even shown what connection Kenneth Siao has with Kener Trading or with the premises sought to be searched. By and large, neither the application nor the joint deposition provided facts or circumstance which could lead a prudent man to believe that an offense had been committed and that the objects sought in connection with the offense, if any, are in the possession of the person named in the application.

“x x x [T]he searching questions propounded to the applicants of the search warrant and his witnesses must depend to a large extent upon the discretion of the Judge just as long as the answers establish a reasonable ground to believe the commission of a specific offense and that the applicant is one authorized by law, and said answers particularly describe with certainty the place to be searched and the persons or things to be seized. The examination or investigation which must be under oath may not be in public. It may even be held in the secrecy of his chambers. Far more important is that the examination or investigation is not merely routinary but one that is thorough and elicit the required information. To repeat, it must be under oath and must be in writing. (Meta v. Bayona, 50720, March 26, 1984, 128 SCRA 388) (underlining supplied)

And, in Quintero v. NBI, G.R. No. L-35149, June 23, 1988, 162 SCRA 467, 483:

“As held in Nolasco v. Paño No. 69803, October 8, 1985, 139 SCRA 163), 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.”

Another infirmity of Search Warrant No. 181 is its generality. The law requires that the articles sought to be seized must be described with particularity. The items listed in the warrant, to wit: “NAPOCOR Galvanized bolts,

grounding motor drive assembly, aluminum wires and other NAPOCOR Towers parts and line accessories” are so general that the searching team can practically take half of the business of Kener Trading, the premises searched. Kener Trading, as alleged in petitioner’s petition before respondent Court of Appeals and which has not been denied by respondent, is engaged in the business of buying and selling scrap metals, second hand spare parts and accessories and empty bottles.

Far more important is that the items described in the application do not fall under the list of personal property which may be seized under Section 2, Rule 126 of the Rules on Criminal Procedure because neither the application nor the joint deposition alleged that the item/s sought to be seized were: a) the subject of an offense; b) stolen or embezzled property and other proceeds or fruits of an offense; and c) used or intended to be used as a means of committing an offense.

It is noted that respondent Judge Jocson himself had doubts about the existence of probable cause in the issuance of the search warrant. In denying petitioner’s motion for reconsideration of the denial of his motion to quash and application for articles seized by virtue of search warrant No. 181, he stated:

“The seeming lack of probable cause during the application for search warrant in the lower court is cured by the admission for the accused of counsel that at least one of the items seized bore the identifying mark of complainant National Power Corporation and the failure to aver in the quashal motion and in the open hearing that the seized items themselves were acquired in the usual course of business for value in good faith. However, this order is without prejudice to the right of the accused to pursue against the administrative liability of MTCC Judge Demosthenes Magallanes.” (p. 54, Rollo)

In his memorandum, City Fiscal Mirano stated that the articles seized by virtue of search warrant No. 181 was taken from the possession of petitioner who signed the receipt in behalf of Kener Trading, which possession is punishable under Section 5, P.D. 1612, which states:

“Sec. 5. Presumption of Fencing. - Mere possession of any goods, article, item, object or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing.”

No matter how incriminating the articles taken from the petitioner may be, their seizure cannot validate an invalid warrant. Again, in the case of *Mata v. Bayona*, G.R. No. 50720, March 26, 1984, 128 SCRA 388:

“x x x that nothing can justify the issuance of the search warrant but the fulfillment of the legal requisites. It might be well to point out what has been said in *Asian Surety & Insurance Co., Inc. v. Herrera*:

‘It has been said that of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books and papers from inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.’

“Thus, in issuing a search warrant the Judge must strictly comply with the requirements of the Constitution and the statutory provisions. A liberal construction should be given in favor of the individual to prevent stealthy encroachment upon, or gradual depreciation of the rights secured by the Constitution. No presumption of regularity are to be invoked in aid of the process when an officer undertakes to justify it.”

Finally, the seized articles were described in the receipt issued by PC Sergeant Mamaril as galvanized bolts, V-chuckle, U-bolts and 3 1/2 feet angular bar (p. 21, Record). There is no showing that the possession thereof is prohibited by law hence, the return thereof to petitioner is proper. Also, the use in evidence of the articles seized

pursuant to an invalid search warrant is enjoined by Section 3(2), Article III of the Constitution.

ACCORDINGLY, the petition is GRANTED. Judgment is hereby rendered: 1) declaring Search Warrant No. 181 issued by Judge Demosthenes Magallanes NULL and VOID; 2) ordering the return of the items seized by virtue of the said warrant to herein petitioner; and 3) permanently enjoining respondents from using in evidence the articles seized by virtue of Search Warrant No. 181 in Criminal Case No. 5657.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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