

**LEON TAMBASEN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
2ND ASSISTANT PROVINCIAL PROSECUTOR GLORIA LASTIMOSA
MARCOS AND HON. CICERO U. QUERUBIN IN HIS CAPACITY AS
PRESIDING JU...**

G.R. No. 89103. July 14, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court to set aside the Order dated July 20, 1989 of the Regional Trial Court (RTC), Branch 44, Bacolod City in Civil Case No. 5331, which nullified the order earlier issued by the Municipal Trial Circuit Court (MTCC) of the City of Bacolod. The MTCC Order directed the return to petitioner of the amount of P14,000.00 which had been seized by the police.

I

On August 31, 1988, P/Sgt. Flumar Natuel applied for the issuance of a search warrant from the MTCC, alleging that he received information that petitioner had in his possession at his house at the North Capitol Road, Bacolod City, "M-16 Armalite Rifles (Mags & Ammos), Hand Grenades, .45 Cal. Pistols (Mags & Ammos), Dynamite Sticks and Subversive Documents," which articles were "used or intended to be used" for illegal purposes (Rollo, p. 14). On the same day, the application was granted by the MTCC with the issuance of Search Warrant No. 365, which allowed the seizure of the items specified in the application (Rollo, p. 15).

At around 6:30 P.M. of September 9, 1988, a police team searched the house of petitioner and seized the following articles:

- "(1) Two (2) envelopes containing cash in the total amount of P14,000.00 (one envelope P10,000.00 and another P4,000.00);
- (2) One (1) AR 280 handset w/antennae (sic) SN-00485;
- (3) One (1) YAESU FM Transceiver FT 23R w/ Antennae (sic);
- (4) One (1) ALINCO ELH 230D Base;
- (5) One (1) DC Regulator Supply 150 V. 13.8 V 12 AMP - 128 VAC;
- (6) One (1) brown Academy Notebook & Assorted papers; and
- (7) Four (4) handsets battery pack" (Rollo, p. 16).

On September 19, 1988, the MTCC, acting on petitioner's urgent motion for the return of the seized articles, issued an order directing Sgt. Natuel to make a return of the search warrant. The following day, Sgt. Natuel submitted a report to the court. Not considering the report as a "return in contemplation of law," petitioner filed

another motion praying that Sgt. Natuel be required to submit a complete and verified inventory of the seized articles. Thereafter, Sgt. Natuel manifested that although he was the applicant for the issuance of the search warrant, he was not present when it was served.

On October 7, 1988, petitioner filed before the MTCC a motion praying that the search and seizure be declared illegal and that the seized articles be returned to him. In his answer to the motion, Lt. Col. Nicolas Torres, the station commander of the Bacolod City Police, said that the amount of P14,000.00 had been earmarked for the payment of the allowance of the Armed City Partisan (ACP) and other "known NPA personalities" operating in the City of Bacolod.

On December 23, 1988, the MTCC issued an order directing Lt. Col. Torres to return the money seized to petitioner. The court opined that in the implementation of the search warrant, any seizure should be limited to the specific items covered thereby. It said that the money could not be considered as "subversive documents"; it was neither stolen nor the effects of gambling.

Three months later, the Solicitor General filed before the RTC, Branch 44, Bacolod City a petition for certiorari seeking the annulment of the order of the MTCC (Civil Case No. 5331). The petition alleged that assuming that the seizure of the money had been invalid, petitioner was not entitled to its return citing the rulings in *Alih v. Castro*, 151 SCRA 279 (1987) and *Roan v. Gonzales*, 145 SCRA 687 (1986). In those cases, the Court held that pending the determination of the legality of the seizure of the articles, they should remain in custodia legis. The petition also averred that a criminal complaint for "any of the crimes against public order as provided under Chapter I, Title III of the Revised Penal Code" had been filed with the City Fiscal (BC I.S. No. 88-1239) and therefore, should the money be found as having been earmarked for subversive activities, it should be confiscated pursuant to Article 45 of the Revised Penal Code.

On July 20, 1989, RTC, Branch 44 issued an order granting the petition for certiorari and directing the clerk of court to return to the MTCC the money pending the resolution of the preliminary investigation being conducted by the city prosecutor on the criminal complaint. In said order, the RTC held:

"The Court observed that private respondent Leon Tambasen never questioned the validity of the search warrant issued by respondent Judge Demosthenes L. Magallanes. A perusal of private respondent's 'Motion to Declare Search and Seizure Illegal and to Return Seized Properties' dated October 7, 1988 shows that respondent Tambasen questions not the validity of the search warrant issued by respondent Judge Demosthenes Magallanes, but rather, the execution or implementation of the said warrant principally on the ground that the articles seized are not allegedly mentioned in the search warrant. However, the question thus raised involves matters determinative of the admissibility in evidence and the legality of the articles seized. These matters, it is submitted, go beyond the immediate and limited jurisdiction of the respondent Judge to inquire into the validity of the search warrant he issued. These issues which relate exclusively or principally with the intrinsic and substantive merits of the case or cases which are being prepared against respondent Tambasen, and insofar as Tambasen is concerned involve matters of defense which should be properly raised at the criminal action or actions that may be filed against respondent Leon Tambasen (see *DOH v. Sy Chi Siong Co., Inc. et al.*, G.R. No. 85289, Feb. 20, 1989). They cannot be addressed to the respondent Judge because the respondent Judge has no jurisdiction over the said issue. It is clear therefore that respondent Judge has transcended the boundaries of his limited jurisdiction and had in effect encroached upon the jurisdiction of the appropriate trial court or courts that will try the criminal case or cases against respondent Leon Tambasen, in issuing the assailed order dated December 23, 1988. Ostensibly, the assailed order, if not corrected, will unduly deprive the prosecution of its right to present the evidence in question and, consequently, will improperly oust the trial court, which will try the criminal case or cases against private respondent Leon Tambasen of its original and exclusive jurisdiction to rule on the admissibility and legality of the said evidence. This order of respondent court is tantamount to a denial of due process. It may be considered as a grave abuse of discretion reviewable

by certiorari (*Esparagoza v. Tan*, 94 Phil. 749)" (Rollo, pp. 47-48).

Consequently, petitioner filed the instant petition for certiorari and prohibition praying for the issuance of a temporary restraining order commanding the city prosecutor to cease and desist from continuing with the preliminary investigation in BC I.S. No. 88-1239 and the RTC from taking any step with respect to Civil Case No. 5331. He also prayed that Search Warrant No. 365 and the seizure of his personal effects be declared illegal and that the Order of July 20, 1989 be reversed and annulled.

Petitioner contended that the search warrant covered three offenses: "(1) illegal possession of armalite rifle and .45 cal. pistol; (2) illegal possession of hand grenade and dynamite sticks; and (3) illegal possession of subversive documents" (Rollo, pp. 3-4) in violation of Section 3 of Rule 126 of the Revised Rules of Court. He assailed the legality of the seizure of the articles which were not mentioned in the search warrant. Moreover, since a complaint against him was filed only after his house had been searched, petitioner claimed that the police were "on a fishing expedition."

During the pendency of the instant petition, a series of events related to the questioned search and seizure transpired. At around 10:30 P.M. of March 1, 1990, petitioner, who was then on board a passenger vehicle, was arrested by intelligence operatives in Barangay Mandalagan, Bacolod City and forthwith detained. On the strength of sworn statements of two rebel returnees, the police filed a complaint for subversion against petitioner with the Office of the City Prosecutor. The following day, the City Prosecutor filed an information for violation of the Anti-Subversion Law against petitioner with RTC, Branch 42, Bacolod City (Criminal Case No. 8517). An order for the arrest of petitioner was issued on March 2, 1990.

On March 6, 1990, petitioner filed a motion to quash the information in Criminal Case No. 8517.

On March 15, 1990, RTC, Branch 42 granted petitioner's motion to quash and recalled the warrant of arrest. The court also directed the City Prosecutor to resolve BC-I.S. Case No. 88-1239.

On March 20, 1990, Assistant Provincial Prosecutor Gloria Lastimosa Marcos manifested before RTC, Branch 42 that petitioner had been "dropped" from BC-I.S. No. 88-1239. However, the City Prosecutor had, by then, filed a motion for the reconsideration of said Resolution of March 15, 1990. The motion was denied.

Under this factual matrix, this Court is confronted with the question of whether RTC, Branch 44 gravely abused its discretion in directing that the money seized from petitioner's house, specifically the amount of P14,000.00, be retained and kept in custodia legis.

On its face, the search warrant violates Section 3, Rule 126 of the Revised Rules of Court, which prohibits the issuance of a search warrant for more than one specific offense. The caption of Search Warrant No. 365 reflects the violation of two special laws: P.D. No. 1866 for illegal possession of firearms, ammunition and explosives; and R.A. No. 1700, the Anti-Subversion Law. Search Warrant No. 365 was therefore a "scatter-shot warrant" and totally null and void (*People v. Court of Appeals*, 216 SCRA 101 [1992]).

Moreover, by their seizure of articles not described in the search warrant, the police acted beyond the parameters of their authority under the search warrant. Section 2, Article III of the 1987 Constitution requires that a search warrant should particularly describe the things to be seized. "The evident purpose and intent of the requirement is to limit the things to be seized to those, and only those, particularly described in the search 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 made and that abuses may not be committed" (*Corro v. Lising*, 137 SCRA 541, 547 [1985]); *Bache & Co. [Phil.], Inc. v. Ruiz*, 37 SCRA 823 [1971]; *Uy Kheytyin v. Villareal*, 42 Phil. 886 [1920]). The same constitutional provision is also aimed at preventing violations of security in person and

property and unlawful invasions of the sanctity of the home, and giving remedy against such usurpations when attempted (*People v. Damaso*, 212 SCRA 547 [1992] citing *Alvero v. Dizon*, 76 Phil. 637, 646 [1946]).

Clearly then, the money which was not indicated in the search warrant, had been illegally seized from petitioner. The fact that the members of the police team were doing their task of pursuing subversives is not a valid excuse for the illegal seizure. The presumption *juris tantum* of regularity in the performance of official duty cannot by itself prevail against the constitutionally protected rights of an individual (*People v. Cruz*, 231 SCRA 759 [1994]; *People v. Veloso*, 48 Phil. 169, 176 [1925]). Although public welfare is the foundation of the power to search and seize, such power must be exercised and the law enforced without transgressing the constitutional rights of the citizens (*People v. Damaso*, *supra*, citing *Rodriguez v. Evangelista*, 65 Phil. 230, 235 [1937]). As the Court aptly puts it in *Bagalihog v. Fernandez*, 198 SCRA 614 (1991), "[z]eal in the pursuit of criminals cannot ennoble the use of arbitrary methods that the Constitution itself abhors."

For the retention of the money seized by the police officers, approval of the court which issued the search warrant is necessary (*People v. Gesmundo*, 219 SCRA 743 [1993]). In like manner, only the court which issued the search warrant may order their release (*Templo v. Dela Cruz*, 60 SCRA 295 [1974]; *Pagkalinawan v. Gomez*, 21 SCRA 1275 [1967]).

Section 3(2) of Article III of the 1987 Constitution provides that evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding.

The information in Criminal Case No. 8517, with petitioner as the sole accused, was ordered quashed by the trial court and the prosecution's motion for the reconsideration of the quashal order had been denied. Even in BC I.S. Case No. 88-1239, which was being investigated by Assistant Provincial Prosecutor Marcos, petitioner was dropped as a respondent. Hence, there appears to be no criminal prosecution which can justify the retention of the seized articles in custodia legis.

A subsequent legal development added another reason for the return to him of all the seized articles: R.A. No. 1700, the Anti-Subversion Law, was repealed by R.A. No. 7636 and, therefore, the crimes defined in the repealed law no longer exist.

WHEREFORE, the petition is GRANTED and the People of the Philippines is ORDERED to RETURN the money seized to petitioner.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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