

BENJAMIN V. KHO AND ELIZABETH ALINDOGAN, PETITIONERS, VS. HON. ROBERTO L. MAKALINTAL AND NATIONAL BUREAU OF INVESTIGATION, RESPONDENTS.

G.R. Nos. 94902-06. April 21, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a petition for certiorari assailing the Order, dated July 26, 1990, of Branch LXXVII of the Metropolitan Trial Court of Paranaque, which denied petitioners' Motion to Quash Search Warrants emanating from the same Court. Petitioners sought to restrain the respondent National Bureau of Investigation (NBI) from using the objects seized by virtue of such warrants in any case or cases filed or to be filed against them and to return immediately the said items, including the firearms, ammunition and explosives, radio communication equipment, hand sets, transceivers, two units of vehicles and motorcycle.

The antecedent facts are as follows:

On May 15, 1990, NBI Agent Max B. Salvador applied for the issuance of search warrants by the respondent Judge against Benjamin V. Kho, now petitioner, in his residence at No. 45 Bb. Ramona Tirona St., BF Homes, Phase I, Paranaque. On the same day, Eduardo T. Arugay, another NBI agent, applied with the same court for the issuance of search warrants against the said petitioner in his house at No. 326 McDivitt St., Bgy. Moonwalk, Paranaque. The search warrants were applied for after teams of NBI agents had conducted a personal surveillance and investigation in the two houses referred to on the basis of confidential information they received that the said places were being used as storage centers for unlicensed firearms and "chop-chop" vehicles. Respondent NBI sought for the issuance of search warrants in anticipation of criminal cases to be instituted against petitioner Kho.

On the same day, the respondent Judge conducted the necessary examination of the applicants and their witnesses, after which he issued Search Warrant Nos. 90-11, 90-12, 90-13, 90-14, and 90-15.

On the following day, May 16, 1990, armed with Search Warrant Nos. 90-11 and 90-12, NBI agents searched subject premises at BF Homes, Paranaque, and they recovered various high-powered firearms and hundreds of rounds of ammunition. Meanwhile, another search was conducted at the house at No. 326 McDivitt St. Bgy. Moonwalk, Paranaque, by another team of NBI agents using Search Warrant Nos. 90-13, 90-14 and 90-15. The said second search yielded several high-powered firearms with explosives and more than a thousand rounds of ammunition. The simultaneous searches also resulted in the confiscation of various radio and telecommunication equipment, two units of motor vehicles (Lite-Ace vans) and one motorcycle. Upon verification with the Firearms and Explosives Unit in Camp Crame, the NBI agents found out that no license has ever been issued to any person or entity for the confiscated firearms in question. Likewise, the radio agents found out that no license has ever been issued to any person or entity for the confiscated firearms in question. Likewise, the radio traneivers recovered and motor vehicles seized turned out to be unlicensed and unregistered per records of the government agencies concerned.

On May 22, 1990, the raiding teams submitted separate returns to the respondent Judge requesting that the items seized be in the continued custody of the NBI (Annexes "O", "P", and "Q", Petition).

On May 28, 1990, the petitioners presented a Motion to Quash the said Search Warrants, contending that:

- The subject search warrants were issued without probable cause;
- The same search warrants are prohibited by the Constitution for being general warrants;
- The said search warrants were issued in violation of the procedural requirements set forth by the Constitution;
- The search warrants aforesaid were served in violation of the Revised Rules of Court; and
- The objects seized were all legally possessed and issued.

On July 26, 1990, respondent Judge issued the assailed Order denying the said Motion To Quash interposed by petitioners.

Petitioners question the issuance of subject search warrants, theorizing upon the absence of any probable cause therefor. They contend that the surveillance and investigation conducted by NBI agents within the premises involved, prior to the application for the search warrants under controversy, were not sufficient to vest in the applicants personal knowledge of facts and circumstances showing or indicating the commission of a crime by them (petitioners).

Petitioners' contention is untenable. Records show that the NBI agents who conducted the surveillance and investigation testified unequivocally that they saw guns being carried to and unloaded at the two houses searched, and motor vehicles and spare parts were stored therein. In fact, applicant Max B. Salvador declared that he personally attended the surveillance together with his witnesses (TSN, May 15, 1990, pp. 2-3), and the said witnesses personally saw the weapons being unloaded from motor vehicles and carried to the premises referred to. NBI Agent Ali Vargas testified that he actually saw the firearms being unloaded from a Toyota Lite-Ace van and brought to the aforementioned house in BF Homes, Paranaque because he was there inside the compound posing as an appliance agent (TSN, May 15, 1990, pp. 4-5). It is therefore decisively clear that the application for the questioned search warrants was based on the personal knowledge of the applicants and their witnesses.

In the case of *Central Bank v. Morfe* (20 SCRA 507), this Court ruled that the question of whether or not a probable cause exists is one which must be determined in light of the conditions obtaining in given situations. In *Luna v. Plaza* (26 SCRA 310), it held that the existence of a probable cause depends to a large extent upon the finding or opinion of the judge who conducted the required examination of the applicants and the witnesses.

After a careful study, the Court discerns no basis for disturbing the findings and conclusions arrived at by the respondent Judge after examining the applicants and witnesses. Respondent judge had the singular opportunity to assess their testimonies and to find out their personal knowledge of facts and circumstances enough to create a probable cause. The Judge was the one who personally examined the applicants and witnesses and who asked searching questions vis-a-vis the applications for search warrants. He was thus able to observe and determine whether subject applicants and their witnesses gave accurate accounts of the surveillance and investigation they conducted at the premises to be searched. In the absence of any showing that respondent judge was recreant of his duties in connection with the personal examination he so conducted on the affiants before him, there is no basis for doubting the reliability and correctness of his findings and impressions.

Petitioners brand as fatally defective and deficient the procedure followed in the issuance of subject search warrants, reasoning out that the same did not comply with constitutional and statutory requirements. They fault respondent Judge for allegedly failing to ask specific questions they deem particularly important during the

examination of the applicants and their witnesses. To buttress their submission, petitioners invite attention to the following question, to wit:

"How did you know that there are unlicensed firearms being kept by Benjamin Kho at No. 45 Bb. Ramona Tirona St., Phase I, BF Homes, Paranaque, Metro Manila?" (TSN, Ali Vargas, May 15, 1990, p. 4)

Petitioners argue that by propounding the aforequoted question, the respondent Judge assumed that the firearms at the premises to be searched were unlicensed, instead of asking for a detailed account of how the NBI agents came to know that the firearms being kept thereat were unlicensed.

This stance of petitioners is similarly devoid of any sustainable basis. Nothing improper is perceived in the manner the respondent Judge conducted the examination of subject applicants for search warrants and their witnesses. He personally examined them under oath, and asked them searching questions on the facts and circumstances personally known to them, in compliance with prescribed procedure and legal requirements. It can be gleaned that the sworn statements and affidavits submitted by the witnesses were duly attached to the pertinent records of the proceedings. It was within the discretion of the examining Judge to determine what questions to ask the witnesses so long as the questions asked are germane to the pivot of inquiry - the existence or absence of a probable cause.

Petitioners claim that subject search warrants are general warrants proscribed by the Constitution. According to them, the things to be seized were not described and detailed out, i.e. the firearms listed were not classified as to size or make, etc.

Records on hand indicate that the search warrants under scrutiny specifically describe the items to be seized thus:

Search Warrant No. 90-11

"Unlicensed radio communications equipments such as transmitters, transceivers, handsets, scanners, monitoring device and the like."

Search Warrant No. 90-13

"Unlicensed radio communications equipments such as transmitters, transceivers, handsets, radio communications equipments, scanners, monitoring devices and others."

The use of the phrase "and the like" is of no moment. The same did not make the search warrants in question general warrants. In *Oca v. Maiquez* (14 SCRA 735), the Court upheld the warrant although it described the things to be seized as "books of accounts and allied papers."

Subject Search Warrant Nos. 90-12 and 90-15 refer to:

"Unlicensed firearms of various calibers and ammunitions for the said firearms."

Search Warrant No. 90-14 states:

"Chop-chop vehicles and other spare parts."

The Court believes, and so holds, that the said warrants comply with Constitutional and statutory requirements. The law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. Otherwise, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things they are looking for. Since the element of time is very crucial in criminal cases, the effort and time spent in researching on the details to be embodied in the warrant would render the purpose of the search nugatory.

In the case under consideration, the NBI agents could not have been in a position to know before hand the exact caliber or make of the firearms to be seized. Although the surveillance they conducted did disclose the presence of unlicensed firearms within the premises to be searched, they could not have known the particular type of weapons involved before seeing such weapons at close range, which was of course impossible at the time of the filing of the applications for subject search warrants.

Verily, the failure to specify detailed descriptions in the warrants did not render the same general. Retired Justice Ricardo Francisco's book on Criminal Procedure has this useful insight:

"A description of the property to be seized need not be technically accurate nor necessarily precise; and its nature will necessarily vary according to whether the identity of the property, or its character, is the matter of concern. Further, the description is required to be specific only so far as the circumstances will ordinarily allow. x x x"

In *People v. Rubio* (57 Phil 384), the Court held that, "... But where, by the nature of the goods to be seized, their description must be rather general, it is not required that a technical description be given, for this would mean that no warrant could issue."

It is indeed understandable that the agents of respondent Bureau have no way of knowing whether the guns they intend to seize are a Smith and Wesson or a Beretta. The surveillance conducted could not give the NBI agents a close view of the weapons being transported or brought to the premises to be searched. Thus, they could not be expected to know the detailed particulars of the objects to be seized. Consequently, the list submitted in the applications for subject search warrants should be adjudged in substantial compliance with the requirements of law.

Petitioners contend that the searching agents grossly violated the procedure in enforcing the search warrants in question. The petition avers supposedly reprehensible acts perpetrated by the NBI agents. Among the irregularities alluded to, are:

- "The raiding team failed to perform the following before breaking into the premises:
 - Properly identify themselves and showing necessary credentials including presentation of the Search Warrants;
 - Furnishing of Search Warrants and allowing the occupants of the place to scrutinize the same;
 - Giving ample time to the occupants to voluntarily allow the raiders entry into the place and to search the premises.
 - The team entered the premises by climbing the fence and by forcing open the main door of the house.
 - Once inside the house, the raiders herded the maids and the sixteen year-old son of defendant Kho into the dining room where they were confined for the duration of the raid. In the case of the son, he was gagged with a piece of cloth, his hands were tied behind his back and he was made to lie face down.
 - Defendant Kho's hands were immediately tied behind his back (initially with a rag and later with the electric cord of a rechargeable lamp) and was restrained in a kneeling position with guns pointed at him throughout the duration of the search. It was only after the search was completed and the seized items stuffed in carton boxes (and a T-bag) that his hands were untied so he can sign the search warrants which he was forced to do.
 - All throughout the search, defendant Kho and his companions were kept in the dining room and continuously intimidated of being shot while the raiders search all the rooms all by themselves and without anybody seeing whatever they were doing."

The question of whether there was abuse in the enforcement of the challenged search warrants is not within the scope of a Motion to Quash. In a Motion to Quash, what is assailed is the validity of the issuance of the warrant. The manner of serving the warrant and of effecting the search are not an issue to be resolved here. As aptly opined and ruled by the respondent Judge, petitioners have remedies under pertinent penal, civil and administrative laws for their problem at hand, which cannot be solved by their present motion to quash.

According to petitioner Kho, the premises searched and objects seized during the search sued upon belong to the Economic Intelligence and Investigation Bureau (EIIB) of which he is an agent and therefore, the NBI agents involved had no authority to search the aforesaid premises and to confiscate the objects seized.

Whether the places searched and objects seized are government properties are questions of fact outside the scope of the petition under consideration. The Court does not see its way clear to rule on such issues lest it preempts the disposition of the cases filed by the respondent NBI against the herein petitioners.

Considering that cases for Illegal Possession of Firearms and Explosives and Violation of Section 3 in relation to Section 14 of Republic Act No. 6539, otherwise known as the Anti-Carnapping Act of 1972, have been instituted against the petitioners, the petition for mandamus with preliminary and mandatory injunction to return all objects seized and to restrain respondent NBI from using the said objects as evidence, has become moot and academic.

WHEREFORE, for want of merit and on the ground that it has become moot and academic, the petition at bar is hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

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