

## SECOND DIVISION

[ G.R. No. 199371, February 03, 2016 ]

**PETRON LPG DEALERS ASSOCIATION AND TOTAL GAZ LPG DEALERS ASSOCIATION, PETITIONERS, VS. NENA C. ANG, ALISON C. SY, NELSON C. ANG, RENATO C. ANG, AND/OR OCCUPANTS OF NATIONAL PETROLEUM CORPORATION, RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Facts discovered during surveillance operations conducted by the authorities on the basis of information and evidence provided by the complainants constitute personal knowledge which could form the basis for the issuance of a search warrant.

This Petition for Review on *Certiorari*<sup>[1]</sup> seeks to set aside the September 2, 2011 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 89220 and its November 17, 2011 Resolution<sup>[3]</sup> dismissing petitioners' appeal and denying their Motion for Reconsideration, respectively.

#### ***Factual Antecedents***

Petitioners Petron LPG Dealers Association and Total Gaz LPG Dealers Association, together with other liquefied petroleum gas (LPG) associations, filed a letter-complaint<sup>[4]</sup> before the National Bureau of Investigation-Ilocos Regional Office (NBI-IRO), requesting assistance in the surveillance, investigation, apprehension and prosecution of respondents Nena C. Ang, Alison C. Sy, Nelson C. Ang, Renato C. Ang, and National Petroleum Corporation (Nation Gas) for alleged illegal trading of LPG products and/or underfilling, possession and/or sale of underfilled LPG products in violation of Sections 2 (a) and (c), in relation to Sections 3 and 4 of *Batas Pambansa Blg. 33*<sup>[5]</sup> as amended by Presidential Decree No. 1865<sup>[6]</sup> (BP 33, as amended), which provide -

Section 2. Prohibited Acts. - The following acts are prohibited and penalized:

(a) Illegal trading in petroleum and/or petroleum products;

(b) x x x x

(c) Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;

x x x x

Sec. 3. Definition of terms, For the purpose of this Act, the following terms shall be construed to mean:

Illegal trading in petroleum and/or petroleum products -

x x x x

(C) Refilling of liquefied petroleum gas cylinders without authority from said Bureau, or refilling of another company's or firm's cylinders without such company's or firm's written authorization;

x x x x

Sec. 4. Penalties. Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than twenty thousand pesos (P20,000) but not more than fifty thousand pesos (P50,000), or imprisonment of at least two (2) years but not more than five (5) years, or both, in the discretion of the court. In cases of second and subsequent conviction under this Act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, adulteration, shortselling, hoarding, overpricing or misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or petroleum products have already been delivered and paid for, the offended party shall be indemnified twice the amount paid, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retail outlets, or hauler, the cancellation of his license.

Trials of cases arising from this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a corporation, partnership, or other juridical person, the president, the general manager, managing partner, or such other officer charged with the management of the business affairs thereof, or employee responsible for the violation shall be criminally liable; in case the offender is an alien, he shall be subject to deportation after serving the sentence.

If the offender is a government official or employee, he shall be perpetually disqualified from office.

In particular, respondents were alleged to be refilling Shellane, Gasul, Totalgaz, Starflame, and Superkalan Gaz LPG cylinders and selling, distributing and transporting the same without the required written authorization from the alleged respective owners of these cylinders - namely, Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex (Philippines) Corporation (Caltex), and Superkalan Gaz Corporation.

Acting on the letter-complaint, the NBI-IRO - through its agent Marvin de Jemil (De Jemil) - conducted surveillance and test-buy operations. Thus, on November 24, 2005, De Jemil and an undercover NBI asset, Leonardo Antonio (Antonio), proceeded to the sales office of one of Nation Gas's alleged customers in Vigan City, Barba Gas Marketing Center (Barba Gas) - a dealer of LPG and cylinders. De Jemil and Antonio waited until a Barba Gas delivery truck was loaded with Starflame LPG cylinders. The truck then left, with De Jemil's vehicle tailing behind. The truck proceeded to and entered a fenced compound located in Magsingal, Ilocos Sur. The entrance to the compound contained a sign which read "LPG Refilling Plant". De Jemil interviewed residents within the vicinity, and it was learned that the compound belonged to or was occupied by Nation Gas.

De Jemil and Antonio waited at a distance. After about one hour, the Barba Gas truck emerged from the compound. De Jemil then followed the truck back to the Barba Gas sales office at Jose Singson street in Vigan, where the refilled Starflame LPG cylinders were unloaded. The two then proceeded to the test-buy phase of the operation; with an empty eleven-kilogram (11 kg.) Starflame LPG tank in hand, they went to Barba Gas and purchased one of the refilled Starflame LPG cylinders unloaded from the truck. The Barba Gas employee took De Jemil's empty cylinder and replaced it with a filled one. De Jemil paid P510.00 for the filled cylinder and received a dated receipt<sup>[7]</sup> for the purchase. Thereafter, the filled Starflame LPG cylinder was examined, weighed, inspected, marked, and photographed.

### ***Ruling of the Regional Trial Court***

On December 7, 2005, the NBI, through De Jemil, filed two Applications for Search Warrant<sup>[8]</sup> to conduct a search of the Magsingal LPG refilling plant. The applications were filed before the Regional Trial Court (RTC) of Bauang, La Union. Judge Ferdinand A. Fe' of RTC Branch 67 propounded the required searching questions, to which De Jemil and Antonio provided the answers.<sup>[9]</sup> De Jemil further submitted a sketch and vicinity/location map<sup>[10]</sup> of the place to be searched; a December 6, 2005 Certification<sup>[11]</sup> or authority to apply for a search warrant issued by his superior, Atty. Rustico Q. Vigilia, NBI-IRO Regional Director; the receipt for the test-buy refilled Starflame LPG cylinder obtained from Barba Gas on November 24, 2005; written Certifications<sup>[12]</sup> to the effect that Nation Gas is not an authorized LPG refiller of Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex and, Superkalan Gaz Corporation; corporate documents of Nation Gas obtained from the Securities and Exchange Commission (SEC); and photographs<sup>[13]</sup> of the Barba Gas delivery truck involved in the refilling operation on November 24, 2005, unloading of the refilled LPG cylinders from the delivery truck after coming from the Magsingal refilling plant, the refilled Starflame LPG cylinder purchased and obtained from the test-buy, and the blank seal covering the test-buy refilled Starflame LPG cylinder - supporting the allegation that the refilling was not authorized as the seal was not a Caltex Starflame seal.

The trial court issued Search Warrant Nos. 2005-59 and 2005-60,<sup>[14]</sup> which were served the following day, or on December 8, 2005, at the Magsingal LPG refilling plant. Items specified in the search warrants were seized and duly inventoried and receipted.<sup>[15]</sup> Thereafter, a Consolidated Return of Search Warrants<sup>[16]</sup> was filed.

On February 7, 2006, respondents filed a Motion to Quash<sup>[17]</sup> Search Warrant Nos. 2005-59 and 2005-60, arguing that the issuing court did not comply with the requirements for issuance of a valid search warrant; that there is no probable cause to issue the subject search warrants, as the certifications issued by the complainants - to the effect that Nation Gas was not an authorized refiller -was not authenticated, the same being mere private documents which required authentication; that De Jemil and Antonio have no personal knowledge of the charges, as well as the truthfulness and authenticity of said certifications; that the issuing court should not have consolidated the two applications, but should have considered them separately in order to arrive at an independent evaluation thereof; that the seizure of Shellane, Gasul, Total Gaz, and Superkalan cylinders was unlawful since there is no specific allegation and evidence of underfilling or illegal refilling - if at all, the inspection was limited to determining if the cylinders were refilled with or without the authority of the complainants; that as a result, the warrants issued were illegal general warrants; and that the warrants covered machinery and equipment classified as real property.

On August 4, 2006, the issuing court released an Order<sup>[18]</sup> quashing the subject warrants. It held that De Jemil and Antonio had no personal knowledge that Nation Gas was not an authorized LPG refiller of the complaining LPG companies/associations; that no member or representative of the complainants was presented as witness to the search warrant applications; that there is no evidence of illegal refilling since De Jemil and Antonio did not witness the supposed refilling of Barba Gas's Starflame LPG cylinders - including the test-buy cylinder - by Nation Gas; that the certifications issued by the LPG companies were hearsay and not based on personal knowledge, since the testimonies or depositions of those who issued them were not taken and presented to the issuing court; that Caltex's certification does not at all state that Nation Gas was an unauthorized refiller; and that the testimonies or depositions of those who tested the Starflame cylinder -who merely issued a certification of test results - were not taken and submitted to the court, thus rendering said certification mere hearsay. The issuing court concluded that there is no probable cause to issue the subject warrants, and there is no reasonable ground to believe that an offense has been committed by the respondents. It decreed, thus:

WHEREFORE, premises considered, Search Warrants Nos. 2005-59 and 2005-60 are hereby ordered QUASHED for lack of probable cause.

The objects seized by virtue thereof are declared inadmissible for any purpose. The applicant, NBI Supervising Agent Marvin E. De Jemil, or any of his authorized representatives, who was authorized to temporarily retain possession and custody of the seized goods/objects for safekeeping at the warehouse located at Barangay Dilan, Urdaneta, Pangasinan, is ordered to immediately return all the seized items to the respondents.

SO ORDERED.<sup>[19]</sup>

Petitioners filed a Motion for Reconsideration;<sup>[20]</sup> however, the same was denied in a January 11, 2006 Order.<sup>[21]</sup>

## ***Ruling of the Court of Appeals***

Petitioners interposed an appeal before the CA. On September 2, 2011, the assailed Decision was rendered denying petitioners' appeal. The appellate court held, as follows:

The appellants<sup>[22]</sup> argue that aside from the testimony of De Jemil and Antonio, other documents were presented at the time of the hearing on the application for Search Warrant No. 2005-59. They posit that these are sufficient to establish probable cause and as such, there was no need for the presentation of persons who certified that Nation was not authorized to refill the branded LPG cylinders. They point out that probable cause is only concerned with probabilities and the standard for its determination is only that of a reasonable prudent man. They stress that after the surveillances and test-buy operations done by De Jemil and Antonio, the two already acquired personal knowledge of the offenses committed by the respondents-appellees.<sup>[23]</sup> It is claimed too that the RTC's finding, that the certification did not state Nation was not authorized to refill, was a vain attempt to steer clear of respondents-appellees' lack of authorization. It is alleged further that although De Jemil and Antonio did not sign the inspection report detailing the weight of the LPG cylinder acquired during the test-buy operations, they were physically present and actually involved in the weighing done, giving them personal knowledge of the under filling by Nation. The appellants aver too that there is no proof that those who weighed the acquired cylinder were employed by them.

x x x x

In reviewing what transpired below, the Court's 'task ... is not to conduct a *de novo* determination of probable cause but only to determine whether there is substantial evidence in the records supporting the Judge's decision.' This being the rule, the petition must fail.

The determination of probable cause for the issuance of a search warrant requires that the facts surrounding the basis for the application must be within the personal knowledge of the applicant or his witnesses. If this does not obtain, the finding of probable cause of a judge may be set aside and the search warrant issued by him based on his finding may be quashed since 'the Judge must strictly comply with the requirements of the Constitution and the statutory provisions.' The circumstances at hand reveal that there is enough basis for the RTC to quash the Subject Warrants.

De Jemil and Antonio relied on sources furnished to them made by persons not presented as witnesses. They, thus, testified as to the truth of facts they had no personal knowledge of. 'Search warrants are not issued on loose, vague or doubtful basis of fact, nor on mere suspicion or belief.' For instance, de Jemil testified as follows:

"Q You said that the gas tanks are under filled, is that