

## SECOND DIVISION

[ G.R. No. 140657, October 25, 2004 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. CESAR O. DELOS REYES, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

Before the Court is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 51759 granting the petition for certiorari of Cesar O. delos Reyes and nullifying Search Warrant No. 98-905 issued on June 18, 1998 by Judge Manuela F. Lorenzo of the Regional Trial Court (RTC) of Manila, Branch 43.

#### The Antecedents

On June 18, 1998, SPO3 Benjamin Nuguid of the Western Police District applied for a search warrant with the RTC of Manila, Branch 43, against Cesar Reyes alias "Cesar Itlog." In support of his application, Nuguid submitted his affidavit and that of Alexis Tan, a housewife. Nuguid and Tan also testified in support of the application. After the court conducted examination of the said witnesses, it issued on even date Search Warrant No. 98-905 authorizing the search of the house allegedly under the possession and custody of one Cesar Reyes alias "Cesar Itlog," at No. 2600 Oroquieta Street, Sta. Cruz, Manila, worded as follows:

#### SEARCH WARRANT

TO ANY PEACE OFFICER:

GREETINGS:

Upon sufficient showing of probable cause, after determination personally made by the undersigned on examination under oath of the applicant and his witness, by means of searching questions and answers, that respondent Cesar Reyes alias "Cesar Itlog" has in his possession, custody and control at the house and premises at 2600 Oroquieta St., Sta. Cruz, Manila, the following items:

- a) undetermined amount of methamphetamine hydrochloride; and
- b) drug paraphernalia

in violation of Republic Act No. 6425 as amended;

You are hereby commanded to make an immediate search at anytime of the day or night of the house and premises above-mentioned and forthwith seize and take possession of the above-cited items and to bring

said items to the undersigned to be dealt with as the law require. Further, you are required to submit the return within ten (10) days from today.

GIVEN UNDER MY HAND AND SEAL this 18th day of June 1998 at the City of Manila.

MANUELA F. LORENZO

J u d g e<sup>[2]</sup>

The policemen conducted a search not only of the house at No. 2600 Oroquieta Street, Sta Cruz, Manila, which turned out to be the house of respondent Cesar delos Reyes, but also of the car and motorcycle owned by the latter, bearing Plate Nos. UBS 463 and TA 8077, respectively. The car and the motorcycle happened to be parked near the house.

As per the receipt of the property signed by Nuguid, the search of the house, the car and the motorcycle yielded the following:

That in the course of orderly search at the premises of Cesar Reyes alias "Cesar Itlog," inside his room at the ground floor was a steel vault and when forced open it yields 13 transparent plastic bags containing [an] undetermined amount of white crystalline substance suspected to be Methamphetamine Hydrochloride or Shabu, three (3) weighing scales "Tamita" broad, drugs paraphernalia and 38 pcs. of Valium-10, also found atop his drawer; a .9mm "Smith & Wesson" pistol, Model 39mm with SN-A643638 with magazines loaded with ammo, one (1) loaded magazine of 9mm and 36 rounds of .25 cal. ammunition inside his drawer, one (1) plastic transparent bag containing white crystalline substance suspected to be Methamphetamine Hydrochloride or Shabu and three (3) 12-gauge shotgun ammo. His personal car, a black VITARA bearing plate No. UBS 463 parked beside his house was also search[ed] in the presence of [a] Bgy. Kagawad and found inside tucked beneath the driver's seat are three (3) sealed transparent plastic bags containing white crystalline substance wrapped in a mail envelope suspected to be Methamphetamine Hydrochloride or Shabu and in his sport Honda Motorcycle 900cc with plate No. TA 8077 also yields one (1) transparent plastic sachet containing white crystalline substance suspected to be Methamphetamine Hydrochloride or Shabu at the motorbike back compartment.<sup>[3]</sup>

According to the Certification prepared by the NBI Forensic Chemistry Division, the crystalline substances contained in the transparent plastic bags which were seized in the respondent's house, car and motorcycle tested positive for methamphetamine hydrochloride.<sup>[4]</sup>

Thereafter, two Informations were filed with the RTC of Manila, Branch 41, against the respondent for violation of Republic Act No. 6425, as amended by Rep. Act No. 8294, docketed as Criminal Cases Nos. 98-165628 and 98-165629, viz:

That on or about June 18, 1998, in the City of Manila, Philippines, the said accused without being authorized by law to possess or use any regulated drug, did then and there willfully, unlawfully and knowingly

have in his possession and under his custody and control eighteen (18) transparent plastic bags (small and big) with [a] total net weight of eight hundred eighty-six point eight (886.8) grams of white crystalline substance known as "shabu" containing methamphetamine hydrochloride, a regulate drug, without the corresponding license or prescription thereof.

Contrary to law.<sup>[5]</sup>

...

That on or about June 18, 1998, in the City of Manila, Philippines, said accused did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control of one (1) .9mm Smith & Wesson pistol, Model 39 with Serial Number-A643638 with two magazines loaded with ammunitions, 36 rounds of .25 caliber ammunition, three (3) 12-gauge shotgun ammunitions, without first having secured from the proper authorities the necessary license therefor.

Contrary to law.<sup>[6]</sup>

The respondent filed a motion to quash the informations on the following grounds: (a) as shown by their testimony before the trial court, applicant Nuguid and his witness Tan had no personal knowledge of the factual allegations in their affidavits which were appended to the application for a search warrant; (b) the factual allegations contained in the said affidavits and their testimonies do not support a finding of probable cause for violation of Rep. Act No. 6425, as amended; and (c) Nuguid and Tan did not personally know the respondent as well as the latter's house because first, Tan identified the illicit drug seller as Cesar Reyes alias "Cesar Itlog" while the respondent's name is Cesar delos Reyes; and, second, the said witnesses described the house as consisting of a two-storey structure with one bedroom located at Oroquieta Street, Sta. Cruz, Manila.

On August 11, 1998, the trial court issued an Order denying the respondent's motion. The court also denied his motion for reconsideration of said order.

The respondent forthwith filed a petition for certiorari against Nuguid and the Public Prosecutor therein in the CA, alleging, *inter alia*, that the questions propounded by RTC Judge Manuela F. Lorenzo on Nuguid and Tan were leading and not searching. He also alleged that Judge Lorenzo delegated the examination of Tan to Nuguid, and allowed the latter to question her. He, likewise, reiterated that Tan and Nuguid did not know him personally because they identified him as "Cesar Reyes" when his full name was Cesar delos Reyes. Furthermore, contrary to the claim of Tan and Nuguid that his house was a two-storey edifice located at Oroquieta Street, Sta. Cruz, Manila, said house was only a one-storey structure located at No. 2600 Oroquieta Street, Sta. Cruz, Manila.

The respondent also assailed the search of his house, car and motorcycle on the ground that he was not there when the search was conducted and that no barangay officials were present as required by Section 7, Rule 126 of the 1997 Rules of Criminal Procedure.

On October 15, 1999, the CA rendered a Decision granting the petition and nullifying the search warrant. The decretal portion reads:

WHEREFORE, all the foregoing considered, the petition is GRANTED. The questioned Order dated January 11, 1999 as well as Search Warrant No. 98-905 dated June 18, 1998 are both hereby ANNULLED and SET ASIDE. Consequently, let a Writ of Prohibition be issued permanently enjoining respondents from using in evidence the articles seized by virtue of Search Warrant No. 98-905 in Criminal Case Nos. 98-165628 and 98-165629. The seized articles obtained by virtue of Search Warrant 98-905 consisting of regulated drug, guns and ammunitions, are hereby ORDERED delivered and turned over to the proper authorities concerned for disposition in accordance with law.

No costs.

SO ORDERED.<sup>[7]</sup>

The appellate court ruled that (a) the RTC delegated its duty to determine probable cause to the applicant; (b) the application for a search warrant was based on hearsay evidence; and (c) the application for the search warrant issued was filed more than four (4) weeks from the alleged time the offense took place; hence, was considered “stale.”

After the denial of its motion for reconsideration of the said decision, the People of the Philippines filed the instant petition for review of the decision, alleging that –

THE COURT OF APPEALS [EIGHTH DIVISION] GRAVELY ERRED IN DECLARING SEARCH WARRANT NO. 98-905 NULL AND VOID DESPITE (i) THE UNMISTAKABLE MANNER BY WHICH THE INVESTIGATING JUDGE CONDUCTED A PERSONAL EXAMINATION OF THE APPLICANT AND HIS WITNESS; (ii) THE SEARCHING QUESTIONS PROPOUNDED AND ANSWERS OBTAINED; AND (iii) THE PERSONAL KNOWLEDGE OF THE APPLICANT AND HIS WITNESS OF THE FACTS THAT INEVITABLY JUSTIFIES THE ISSUANCE OF THE SEARCH WARRANT.<sup>[8]</sup>

The petitioner avers that Judge Lorenzo did not delegate the determination of probable cause to Nuguid before issuing the subject warrant. While she allowed Nuguid to propound questions on Alexis Tan, the same consisted of only three preliminary questions, and, as such, was inconsequential. The petitioner also asserts that the leading questions propounded by Judge Lorenzo on Tan does not detract from the fact that searching questions were also propounded on the witnesses, and that based on the entirety of such propounded questions and the latter’s answers, there was probable cause for the issuance of a search warrant. The petitioner maintains that Tan had personal knowledge of the respondent’s delictual acts which were in violation of Rep. Act No. 6425, as amended. Moreover, as gleaned from the affidavits of Tan and Nuguid and their collective testimonies before the RTC, the respondent’s house was sufficiently described and identified, which description Nuguid was able to confirm through his surveillance of the house, the place where the crime was committed.

The petitioner further contends that although there was an *interregnum* of six (6) months from the time the commission of the crime came to the knowledge of Tan up

to the filing of the application of the search warrant by Nuguid, the same did not obscure the finding of probable cause made by Judge Lorenzo.

The Court gave due course to the petition and required the parties to submit their respective memoranda.<sup>[9]</sup>

After a comprehensive and well-studied review of the *Rollo* and the records of the Court of Appeals, we resolve to deny the petition.

### *The Petition Was Filed Out of Time*

The Office of the Solicitor General (OSG) admitted in the petition at bar that it received a copy of the assailed decision of the CA on October 21, 1999. Under Section 2, Rule 45 of the Rules of Court, the OSG had until November 5, 1999 within which to file its petition for review on certiorari. However, it did so only on November 25, 1999, long after the period therefor had lapsed. We reject as totally unacceptable the pretext of Solicitor Ma. Theresa Dolores C. Gomez-Estoesta that, because of heavy pressure of work,<sup>[10]</sup> the actual filing of the motion to file the petition at bar prepared on November 3, 1999, was "accidentally slighted." The Solicitor is mandated to insure that her motion for extension was filed within the period therefor.<sup>[11]</sup> Volume of work is a lame excuse.<sup>[12]</sup> She cannot escape the adverse effects of her forgetfulness.

Even if we gloss over the gross negligence of the OSG and resolve the petition on its merits, we find the same to be barren of merit.

A search warrant must (a) be based on probable cause; (b) contain a particular description of the place to be searched; and (c) must describe the items or property to be seized.<sup>[13]</sup> Probable cause comprehends such facts and circumstances as will induce a cautious man to rely upon and act in pursuance thereof.<sup>[14]</sup>

It bears stressing that the requirement of particularity is related to the probable cause requirement in that, at least, under severe circumstances, the lack of a more specific description will make it apparent that there has not been a sufficient showing to the Judge that the described items are to be found in a particular place. Probable cause must first focus on a specific location. If the applicant or official is unable to state with sufficient precision the place to be searched and why he reasonably believes that contraband or evidence of criminal activity will be found therein, it is highly doubtful that he possesses probable cause for a warrant.<sup>[15]</sup>

In issuing a search warrant, the Judge must strictly comply with the requirements of the Constitution and the statutory provisions.<sup>[16]</sup>

A search warrant shall not 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.<sup>[17]</sup> Before issuing a search warrant, the Judge must personally examine, in the form of searching questions and answers, in writing and under oath, the complainant and his witnesses he may produce, on facts personally known to them.<sup>[18]</sup>