

## THIRD DIVISION

[ G.R. No. 126379, June 26, 1998 ]

**PEOPLE OF THE PHILIPPINES, REPRESENTED BY PROVINCIAL PROSECUTOR FAUSTINO T. CHIONG, PETITIONER, VS. COURT OF APPEALS, JUDGE CAESAR CASANOVA, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 80, MALOLOS, BULACAN, AZFAR HUSSAIN, MOHAMMAD SAGED, MUJAHID KHAN, MOHAMMAD ASLAM, AND MEHMOOD ALI, RESPONDENTS.**

### DECISION

**NARVASA, C.J.:**

In behalf of the People, the Solicitor General has perfected the appeal at bar under Rule 45 of the Rules of Court from the Decision promulgated on September 11, 1996 of the Fourteenth Division of the Court of Appeals.<sup>[1]</sup> Said judgment dismissed the People's petition for *certiorari* to invalidate (i) the order of Judge Caesar A Casanova of Branch 80 of the Regional Trial Court dated February 9 1996,<sup>[2]</sup> as well as (ii) that dated May 28, 1996 denying the People's motion for reconsideration.<sup>[3]</sup> Those orders were handed down in Criminal Case No. 43-M-96, a case of illegal possession of explosives after the accused had been arraigned and entered a plea of not guilty to the charge. More particularly, the Order of February 9, 1996:

- 1) quashed a search warrant (No. 1068 <sup>[95]</sup>) issued by Judge Marciano I. Bacalla of Branch 216 of the Regional Trial Court at Quezon City on December 15, 1995,<sup>[4]</sup>
- 2) declared inadmissible for any purpose the items seized under the warrant, and
- 3) directed the turnover of the amount of U.S. \$5,750.00 to the Court within five (5) days "to be released thereafter in favor of the lawful owner considering that said amount was not mentioned in the Search Warrant."

The antecedents, "culled from the records" by the Appellate Court, are hereunder set out.

1. "On December 14, 1995, S/Insp PNP James Brillantes applied for search warrant before Branch 261, RTC of Quezon City against Mr. Azfar Hussain, who had allegedly in his possession firearms and explosives at Abigail Variety Store, Apt. 1207 Area F, Bagong Buhay Ave. Sapang Palay, San Jose del Monte Bulacan."
2. "The following day, December 15, 1995, Search Warrant No. 1068 (95) against Mr. Hussain was issued not at Abigail Variety Store but at Apt. No. 1, immediately adjacent 9to0 Abigail Variety Store resulting in the arrest of four (4) Pakistani nationals and in the seizure of their personal

belongings, papers and effects such as wallet, wrist watches, pair of shoes, jackets, t-shirts, belts, sunglasses and travelling bags including cash amounting to \$3,550.00 and P1,500.00 aside from US \$5,175.00 (receipted) which were never mentioned in the warrant. The sum of \$5,175.00 was however returned to the respondents upon order of the court on respondent's motion or request. Included allegedly are one piece of dynamite stick; two pieces of plastic explosives C-4 type and one (1) fragmentation grenade. But without the items described in the search warrant are: (a) three (3) Ingram machine pistols; (b) four (4) gmm pistol; (c) blasting caps; (d) fuse; (e) assorted chemical ingredients for explosives; and (f) assorted magazine assg and ammunitions."

3. "On December 19, 1995, three days after the warrant was served, a return was made without mentioning the personal belongings, papers and effects including cash belonging to the private respondents. There was no showing that lawful occupants were made to witness the search."

4. "On January 22, 1996, private respondents upon arraignment, pleaded not guilty to the offense charged; \*\*" and on the same date, submitted their "*Extremely Urgent Motion (To Quash Search Warrant and to Declare Evidence Obtained Inadmissible)*," dated January 15, 1996;

5. "\*\*\* According to the private respondents in their pleading (consolidated comment on petition for *certiorari* \*\*): On January 29, 1996, an ocular inspection of the premises searched was conducted by respondent Judge and the following facts had been established as contained in the order dated January 30, 1996\*\* to wit:

"1) That the residence of all the accused is at Apartment No. 1 which is adjacent to the Abigail's Variety Store;

2) That there is no such number as 1207 found in the building as it is correspondingly called only 'Apartment No. 1, 2, 3, and 4;'

3) That Apartment No. 1 is separate from the Abigail's Variety Store;

4) That there are no connecting doors that can pass from Abigail's Variety Store to Apartment No. 1;

5) That Abigail's Variety Store and Apartment No. 1 have its own respective doors used for ingress and egress.

That there being no objection on the said observation of the Court, let the same be reduced on the records.

SO ORDERED." "

6. "On February 9, 1996, respondent Judge \*\* issued its order duly granting the motion to quash search warrant \*\*;"[5]

7. "On February 12, 1996, private respondents filed the concomitant motion to dismiss \*\*;"

8. "On February 19, 1996, Asst. Provincial Prosecutor Rolando Bulan filed a motion for reconsideration and supplemental motion on the order quashing the search warrant\*\*;"

9. "On February 27, 1996 and March 12, 1996, private respondent filed opposition/comment and supplemental opposition/comment on the motion for reconsideration \*\*:"

10. "On May 28, 1996, respondent Judge \*\* issued its order denying the motion for reconsideration \*\*; (and on) June 11, 1996, private respondents filed extremely urgent reiterated motion to dismiss\*\*."

Chiefly to nullify Judge Casanova's quashal Order of February 9, 1996 above referred to, the Solicitor General forthwith commenced a special civil action of *certiorari* in the Court of Appeals. The action did not prosper, however. As earlier mentioned, the Fourteenth Division of the Appellate Tribunal promulgated judgment on September 11, 1996, dismissing the case for lack of merit.

The judgment was grounded on the following propositions, to wit:[6]

1. The place actually searched was different and distinct from the place described in the search warrant. This fact was ascertained by the Trial Judge through an ocular inspection, the findings wherein, not objected to by the People, were embodied in an order dated January 30, 1996. The place searched, in which the accused (herein petitioners) were then residing, was *Apartment No. 1*. It is a place other than and separate from, and in no way connected with, albeit and adjacent to, *Abigail's Variety Store*, the place stated in the search warrant.

2. The public prosecutor's claim -- that the sketch submitted to Judge Bacalla relative to the application for a search warrant, actually depicted the particular place to be searched -- was effectively confuted by Judge Casanova who pointed out that said "SKETCH was not dated, not signed by the person who made it and not even mentioned in the *Search Warrant by the Honorable Judge* (Bacalla, who) *instead \*\* directed them to search Abigail Variety Store Apartment 1207 \*\** in the Order \*\* dated December 15, 1995" -- this, too, being the address given "in the Application for Search Warrant dated December 14, 1995 requested by P/SR INSP. Roger James Brillantes, the Team Leader." The untenability of the claim is made more patent by the People's admission, during the hearing of its petition for certiorari in the Court of Appeals, that said sketch was in truth "*not attached to the application for search warrant \*\* (but) merely attached to the motion for reconsideration.*"[7]

Quoted with approval by the Appellate Court were the following observations of Judge Casanova contained in his Order of May 28, 1996, viz.: [8]

"(d)\*\* *it is very clear that the place searched is different from the place mentioned in the Search Warrant*, that is the reason why even P/SR. INSP Roger James Brillantes, SPO1 Prisco Bella and SPO4 Cesar D. Santiago, who were all EDUCATED, CULTURED and ADEPT to their tasks of being

RAIDERS and who were all STATIONED IN BULACAN were not even able to OPEN THEIR MOUTH to say in TAGALOG with Honorable Judge who issued the Search Warrant the words 'KATABI', or 'KADIKIT' or 'KASUNOD NG ABIGAIL VARIETY STORE ang papasukin namin" or if they happen to be an ENGLISH speaking POLICEMEN, they were not able to open their mouth even to WHISPER the ENGLISH WORDS 'RESIDE' or 'ADJACENT' or 'BEHIND' or 'NEXT to ABIGAIL VARIETY STORE, the place they are going to raid.'\*\*."

3. The search was not accomplished in the presence of the lawful occupants of the place (herein private respondents) or any member of the family, said occupants being handcuffed and immobilized in the living room at the time. The search was thus done in violation of the law.<sup>[9]</sup>

4. The articles seized were not brought to the court within 48 hours as required by the warrant itself; "(i)n fact the return was done after 3 days or 77 hours from service, in violation of Section 11, Rule 126 of the Rules of Court."<sup>[10]</sup>

5. Judge Casanova *"correctly took cognizance of the motion to quash search warrant, pursuant to the doctrinal tenets laid down in Nolasco vs. Paño (139 SCRA 152) which overhauled the previous ruling of the Supreme Court in Templo vs. dela Cruz (60 SCRA 295). It is now the prevailing rule that whenever a search warrant has been issued by one court or branch thereof and a criminal case is initiated in another court or branch thereof as a result of the search of the warrant, that search warrant is deemed consolidated with the criminal case for orderly procedure. The criminal case is more substantial than the search warrant proceedings, and the presiding Judge in the criminal case has the right to rule on the search warrant and to exclude evidence unlawfully obtained (Nolasco & Sans cases).*

6. Grave abuse of discretion cannot be imputed to the respondent Judge, in light of "Article III, Section 2 of the Constitution and Rule 126 of the Rules of Court."

7. The proper remedy against the challenged Order is an appeal, not the special civil action of *certiorari*.

The Solicitor General now seeks reversal of the foregoing verdict ascribing to the Court of Appeals the following errors, to wit:

1) sanctioning "the lower Court's precipitate act of disregarding the proceedings before the issuing Court and overturning the latter's determination of probable cause and particularity of the place to be searched;"

2) sanctioning "the lower Court's conclusion that the sketch was not attached to the application for warrant despite the clear evidence \*\* to the contrary;"

3) ignoring "the very issues raised in the petition before it:"

- 4) "holding that the validity of an otherwise valid warrant could be diminished by the tardiness by which the return is made;"
- 5) hastily applying "the general rule that *certiorari* cannot be made a substitute for appeal although the circumstances attending the case at bar clearly fall within the exceptions to that rule;" and
- 6) depriving petitioner of "the opportunity to present evidence to prove the validity of the warrant when the petition before it was abruptly resolved without informing petitioner thereof."

The whole case actually hinges on the question of whether or not a search warrant was validly issued as regards the apartment in which private respondents were then actually residing, or more explicitly, whether or not that particular apartment had been specifically described in the warrant.

The Government insists that the police officers who applied to the Quezon City RTC for the search warrant had direct, personal knowledge of the place to be searched and the things to be seized. It claims that the police officers, in fact, had been able to surreptitiously enter the place to be searched prior to the search: this being the first of four (4) separate apartments behind the Abigail Variety Store; and they were also the same police officers who eventually effected the search and seizure. They thus had personal knowledge of the place to be searched and had the competence to make a sketch thereof; they knew exactly what objects should be taken therefrom; and they had presented evidence sufficient to establish probable cause. That may be so; but unfortunately, the place they had in mind -- *the first of four (4) separate apartment units (No. 1) at the rear of "Abigail Variety Store"* -- was not what the Judge who issued the warrant himself had in mind, and *was not what was ultimately described in the search warrant.*

The discrepancy appears to have resulted from the officers' own faulty depiction of the premises to be searched. For in their application and in the affidavit thereto appended, they wrote down a description of the place to be searched, which is exactly what the Judge reproduced in the search warrant: "*premises located at Abigail Variety Store Apt 1207, Area-F, Bagong Buhay Avenue, Sapang Palay, San Jose Del Monte, Bulacan.*" And the scope of the search was made more particular -- and more restrictive -- by the Judge's admonition in the warrant that the search be "*limited only to the premises herein described.*"

Now, at the time of the application for a search warrant, there were at least five (5) distinct places in the area involved: the store known as "Abigail's Variety Store," and *four (4) separate and independent residential apartment units*. These are housed in a single structure and are contiguous to each other although there are no connecting doors through which a person could pass from the interior of one to any of the others. Each of the five (5) places is independent of the others, and may be entered only through its individual front door. Admittedly, the police officers did not intend a search of all five (5) places, but only one of the residential units at the rear of Abigail's Variety Store: that immediately next to the store (Number 1).

However, despite having personal and direct knowledge of the physical configuration of the store and the apartments behind the store, the police officers failed to make Judge Bacalla understand the need to pinpoint Apartment No. 1 in the warrant. Even after having received the warrant -- which directs that the search be "*limited only to the premises herein described,*" "*Abigail Variety Store Apt 1207*" -- thus literally