

SECOND DIVISION

[G.R. No. 124461, September 25, 1998]

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE JUDGE ESTRELLA T. ESTRADA, PRESIDING JUDGE, RTC, BRANCH 83, QUEZON CITY; AND AIDEN LANUZA, RESPONDENTS.

DECISION

MARTINEZ, J.:

The People of the Philippines, through this petition for review, seeks the reversal of the order of respondent Judge Estrella T. Estrada, dated December 7, 1995, which granted private respondent Aiden Lanuza's motion to quash Search Warrant No. 958 (95), as well as the order dated April 1, 1996 denying petitioner's motion for reconsideration of the earlier order.

On June 27, 1995, Atty. Lorna Frances F. Cabanlas, Chief of the Legal, Information and Compliance Division (LICD) of the Bureau of Food and Drugs (BFAD), filed with the Regional Trial Court of Quezon City, Branch 83, an application for the issuance of a search warrant against "Aiden Lanuza of 516 San Jose de la Montana Street, Mabolo, Cebu City," for violation of Article 40 (k) of Republic Act 7394 (The Consumer Act of the Philippines).

In her application for search warrant, Atty. Cabanlas alleged, among others, as follows:

"1. On June 5, 1995, in my official capacity as Attorney V and Chief of LICD, I received reports from SPO4 Manuel P. Cabiles of the Regional Intelligence Group IV, Intelligence Command of the PNP that certain -

1.a. Aiden Lanuza of 516 San Jose de la Montana Street, Mabolo, Cebu City sold to said Officer Cabiles various drug products amounting to Seven Thousand Two Hundred Thirty Two Pesos (P 7,232.00) on May 29, 1995;

1.b. Said Aiden Lanuza or her address at 516 San Jose de la Montana Street, Mabolo, Cebu City has no license to operate, distribute, sell or transfer drug products from the BFAD;

1.c. Distribution, sale or offer for sale or transfer of drug products without license to operate from BFAD is in violation of Art. 40 (k) of RA 7394 (or 'the Consumer Act').

"2. In support of the report, the subscribed affidavit of Mr. Cabiles, his report and the various drug products sold and purchased contained in a (sic) plastic bags marked 'Lanuza Bag 1 of 1' and 'Lanuza Bag 2 of 2'

were enclosed; and the same are likewise submitted herewith.

xxx xxx xxx."^[1] (Emphasis supplied)

The application, however, ended with the statement that the warrant is to search the premises of another person at a different address:

"3. This is executed to support affiant's application for a search warrant on the premises of Belen Cabanero at New Frontier Village, Talisay Cebu."

^[2] (Emphasis supplied)

In support of the application, the affidavit of SPO4 Manuel P. Cabiles, a member of the Regional Intelligence Group IV of the PNP Intelligence Command, Camp Vicente Lim, Canlubang, Laguna, was attached thereto, wherein he declared that:

"1. Upon the request for assistance by BFAD, he conducted surveillance for persons distributing, selling or transferring drug products without license to operate from BFAD.

"2. On May 29, 1995, a certain Aiden Lanuza of 516 San Jose de la Montana St., Mabolo, Cebu City sold to him various drug products amounting to P7,232.00 and

"3. Upon further verification in the BFAD registry of licensed persons or premises, the said person and place have in fact no license to operate.

"4. Earlier than May 29, 1995, affiant saw a delivery of drug products from the residence of Mrs. Lanuza in 516 San Jose de la Montana St., Mabolo, Cebu City to another person.

"5. Accompanying this affidavit are the various products sold to/and purchased by the affiant contained in two (2) plastic bags marked 'Lanuza Bag 1 of 1' and 'Lanuza Bag 2 of 2.'

"This is executed in support of the affiant's report to BFAD and for whatever legitimate purpose this may serve." ^[3] (Emphasis supplied)

The BFAD also submitted with the application a copy of the sketch^[4] of the location of Aiden Lanuza's residence at her stated address.

On the same day the application was filed, the respondent Judge issued Search Warrant No. 958 (95), which reads in full:

"REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 83 - QUEZON CITY

PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus -

SEARCH WARRANT NO. 958 (95)

AIDEN LANUZA,
Defendant.

X-----X

SEARCH WARRANT

"It appears to the satisfaction of this Court, after examining under oath Atty. Lorna Frances F. Cabanlas, Chief of the Legal Information and Compliance Division (LICD) of the Bureau of Food and Drugs (BFAD) and her witness, Manuel P. Cabiles, member of the Intelligence Group IV, Intelligence Command, PNP, Camp Vicente Lim, Canlubang, Laguna, that there are reasonable grounds to believe that a violation of Article 40(k) in relation to Article 41 of Republic Act No. 7394 (Consumer Act) has been committed or about to be committed and there are good and sufficient reasons to believe that Ms. Aiden Lanuza of 516 San Jose dela Montana Street, Cebu City has in her possession and control at said address the following described properties:

medicines and drugs of undetermined quantity among which are Bricanyl Tablet, Bisolvon Tablet, Buscopan Tablet, Buscopan Ampoule, Mucosolvan Ampoule, Persantin Tablet, Tegretol Tablet, PZA-Ciba Tablet, Voltaren Tablet, Zantac Ampoule, Ventolin Tablet, Ventolin Inhaler, Dermovate Cream, Fortum Vial, Zinacef Vial, Feldene 1M Ampoule, Norvasoc Tablet, Bactrim Forte Tablet, Rocephin Vial, Tilcotil Tablet, Librax Tablet, Methergin Tablet and Tagamet Tablet

which she is selling, distributing and transferring without the necessary license from the Department of Health.

"You are hereby commanded to make an immediate search at any time of the DAY or NIGHT of the premises above-described and forthwith seize and take possession of the undetermined amount of drugs and medicines subject of the offense and to bring the same to this Court to be dealt with as the law directs.

"You are further directed to submit a return of this Search Warrant within ten (10) days from today.

"This Search Warrant is valid within a period of ten (10) days from the date of issue.

"GIVEN UNDER THE HAND AND SEAL of this Court this 27th day of June 1995 at Quezon City.

(Sgd.)ESTRELLA T. ESTRADA
Second Vice Executive Judge"^[5]
(Emphasis supplied)

On June 28, 1995, the search warrant was served at private respondent Lanuza's residence at the indicated address by a composite team of policemen from the PNP

7th Criminal Investigation Command, Camp Sotero Cabahug, Cebu City.

How the search warrant was implemented was briefly narrated in the Joint Affidavit, [6] dated June 29, 1995, of SPO2 Fructuoso Bete, Jr. and SPO2 Marckbilly Capalungan, both members of the search and seizure team. They stated in their affidavit that their team, armed with the search warrant, "conducted a raid at the premises of one AIDEN LANUZA of 516 San Jose de la Montana Street, Cebu City x x x;" that **"the raid was witnessed by Luis Rivera, Demetrio Panimdim and Francisco Ojales, both (sic) Brgy. Tanod of Kasambagan, Cebu City;"** that **"the service of the (search) warrant resulted in the confiscation of fifty-two (52) cartoons (sic) of assorted medicines from the possession and control of AIDEN LANUZA;"** and that the "said items were brought to the 7CICRO office for detailed inventory headed by Atty. Lorna F. Cabanlas, Chief of the Legal Information and Compliance Division of the BFAD, Manila." [7] (Emphasis supplied)

The present petition, however, narrates a **different** account of what actually happened during the implementation of the search warrant. Paragraph 5 of the petition states: "At the commencement of the search, the members of the team **discovered** that the **premises described as 516 San Jose de la Montana St., Mabolo, Cebu City was actually a five thousand (5,000) square meter compound containing at least fifteen (15) structures which are either leased residences, offices, factories, workshops or warehouse.** The policemen proceeded to search **the residence of private respondent Lanuza at Lot No. 41** of said address. **Finding no drug products thereat, they proceeded to search a nearby warehouse at Lot No. 38 within the same compound** and address above stated. **This search yielded fifty-two (52) cartons of assorted drug products which were then inventoried in due course.** x x x." [8] (Emphasis supplied)

In an order [9] dated July 3, 1995, the respondent Judge noted the inventory of the seized drugs and authorized the BFAD to retain custody of the same, to have samples of the drugs analyzed and be brought to the registered drug manufacturers for parallel testing.

On August 22, 1995, private respondent Aiden Lanuza filed a verified motion [10] praying that Search Warrant No. 958 (95) be quashed and that the seized articles be declared inadmissible in any proceeding and ordered returned to the warehouse owned by Folk Arts Export & Import Company located at Lot No. 38 inside the compound at 516 San Jose de la Montana Street, Cebu City. The motion is based on the grounds that the search warrant is illegal and null and void because: (1) it was applied to search the premises of one Belen Cabanero at New Frontier Village, Talisay, Cebu, but was issued to search the residence of private respondent Aiden Lanuza at 516 San Jose de la Montana Street, Cebu City; (2) it was issued for a non-existing offense; (3) Atty. Lorna Frances F. Cabanlas was not duly authorized by applicant BFAD to apply therefor; (4) it failed to particularly describe the place to be searched and the things to be seized; (5) the applicant's witnesses had no personal knowledge of the facts upon which it was issued; and (6) its implementation was unreasonable as it was enforced on a different or wrong place which was lawfully occupied by a different or wrong person. [11]

Atty. Lorna Frances Cabanlas, who appeared for the BFAD, opposed [12] the motion

to quash the search warrant, to which the private respondent countered with a reply.

After the contending parties had submitted their respective positions without further oral arguments, the respondent Judge issued the assailed order^[13] dated December 7, 1995, quashing Search Warrant No. 958 (95). Accordingly, the order dated July 3, 1995 was revoked and all the articles seized were declared inadmissible in any and all proceedings against private respondent Aiden Lanuza. Also, the BFAD was ordered to return at its expense all the seized items to the warehouse of Folk Arts Import & Export Company at Lot No. 38, 516 San Jose de la Montana St., Mabolo, Cebu City within a period of fifteen (15) days from notice of the said order.^[14]

Petitioner's motion for reconsideration of the December 7, 1995 order was denied in an order^[15] dated April 1, 1996, impelling petitioner to file the present petition asserting that the respondent Judge erred:

a) In holding that the defect appearing in BFAD's application for a search warrant is so "grave" in nature as to warrant quashal of the search warrant issued thereunder, considering that such variance is actually a harmless clerical error.

b) In holding that Atty. Cabanlas was not authorized by the BFAD to apply for a search warrant concerning the unlicensed distribution of drugs, considering that the grant of BFAD authorization upon her to investigate fake, misbranded, adulterated or unregistered drugs necessarily contemplates the authority to investigate the unlicensed activities above noted.

c) In holding that applicant BFAD had failed to discharge the burden of proving probable cause for issuance of a search warrant, by failing to present documentary proof indicating that private respondent had no license to sell or distribute drug products, considering that under the authority of *Carillo v. People* (229 SCRA 386) the BFAD only had the burden of proving the negative ingredient of the offense charged on the basis of the best evidence procurable under the circumstances.

d) In holding that the place sought to be searched had not been described with sufficient particularity in SW No. 958 (95), considering that Aiden Lanuza's residence at Lot No. 41, 516 San Jose de la Montana St., Mabolo, Cebu City was not so conspicuously or notoriously represented to the public as such by her as to contradict the investigating and serving officers' perception of the outward appearance of her dwelling, which led them to believe that the more general address of 516 San Jose de la Montana St., Mabolo, Cebu City referred to her dwelling.

e) In ordering the return of the things seized, the possession of which is prohibited.^[16]

We granted the petitioner's application for the issuance of a temporary restraining order in a resolution^[17] dated June 26, 1996 and restrained the implementation of the assailed orders, effective immediately and until further orders from this Court.