

## SIXTH DIVISION

[ CA-G.R. SP NO. 90294, August 31, 2006 ]

**DANTE R. GUTIERREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, HON. ANTONIO M. EUGENIO, JR., PRESIDING JUDGE OF RTC-MANILA, BRANCH 24, AND MARVIN DE JEMIL OF THE NATIONAL BUREAU OF INVESTIGATION, SHELLANE DEALERS ASSOCIATION, INC., PETRON GASUL DEALERS ASSOCIATION, INC., AND TOTALGAZ DEALERS ASSOCIATION, INC., RESPONDENTS.**

### D E C I S I O N

#### **COSICO, J.:**

This is a petition for *certiorari* and prohibition under Rule 65 of the 1997 Rules of Civil Procedure which seeks to annul and set aside herein public respondent judge Honorable Antonio M. Eugenio, Jr.'s Orders dated December 8, 2004 and April 14, 2005, and to desist respondent judge from further proceeding and/or taking any action pursuant to Search Warrant No. 04-5051.

#### **The Facts**

Herein petitioner Dante R. Gutierrez is the owner and proprietor of Capitol Allied Trading and Transport (CATT Gas, for brevity), a single proprietorship duly existing and registered under Philippine laws, with branch office situated at No. B1 L3 PH4, G. Azucena Street, Barangay Longos, Malabon, Metro Manila. It has been engaged in the Liquefied Petroleum Gas (LPG) business for more than twenty (20) years.

On March 5, 2004, herein public respondent judge Honorable Antonio M. Eugenio, Jr. of the Regional Trial Court, Branch 24 of Manila issued in *People of the Philippines v. Dante R. Gutierrez, Lourdes D. Gutierrez, James D. Gutierrez and/or Occupants of CATT Gas Refilling Plant, located at Azucena Street, Longos, Malabon, Metro Manila* Search Warrant No. 04-50511 for illegal trading of LPG, or violation of Section 2 (a), in relation to Sections 3 (c) and 4, of Batas Pambansa Blg. 33, as amended by P.D. No. 1865. The warrant reads in part –

“It appearing to the satisfaction of the undersigned after examining, under oath the applicant, **MARVIN E. DE JEMIL**, NBI Agent, Field Operations Division, Intelligence Services, National Bureau of Investigation (‘NBI FOD-IS’, for brevity), Taft Avenue, Manila, and his witness, a certain Mr. Joel Cruz, that there are good and sufficient reasons to believe that a violation of Section 2 (a), in relation to Sections 3 (c) and 4, of Batas Pambansa Blg. 33, as amended by Presidential Decree No. 1865, has been committed or is about to be committed, and that there are good and sufficient reasons to believe that the following:

A. Empty/filled Fifty Kilogram (50 Kg.) and/or Twenty-Two Kilogram (22 Kg.) and/or Eleven Kilogram (11 Kg.) and/or Five and 5/10 Kilogram (5.5 Kg.) and/or Two and 7/10 Kilogram (2.7 Kg.) Liquefied Petroleum Gas (LPG) cylinders being used and/or intended to be used for the illegal trading of LPG products, i.e., refilling of the branded LPG cylinders enumerated hereunder without the written authorization of their respective companies, more particularly described as follows:

- a. Empty/filled Shellane 50 Kg. and/or 11 Kg. LPG cylinders owned by Pilipinas Shell Petroleum Corporation;
- b. Empty/filled Petron Gasul 50 Kg. and/or 11 Kg. LPG cylinders owned by Petron Corporation;
- c. Empty/filled Petron Gasulette 2.7 Kg. LPG cylinders owned by Petron Corporation;
- d. Empty/filled Totalgaz 50 Kg. and/or 22 Kg. and/or 11 Kg. LPG cylinders owned by Total (Philippines) Corporation; and
- e. Empty/filled Superkalan Gaz 2.7 Kg. LPG cylinders owned by Total (Philippines) Corporation;

B. Machinery and/or equipment, such as but not limited to, LPG bullet tanks, LPG filling heads, LPG filling scales, LPG seals bearing the marks of the abovementioned companies, compressors, pumps, electric switches, and/or panel boards, being used or intended to be used for the illegal trading of the abovementioned LPG cylinders owned by the aforementioned companies;

C. Invoices, ledgers, journals, delivery receipts, official receipts, purchase orders, cash and/or check vouchers, counter-receipts, and all other books of accounts and/or documents showing the illegal trading of the abovementioned LPG cylinders owned by the aforementioned companies; and

D. Delivery vehicles, tanker lorry, and/or conveyances being used or intended to be used for the illegal trading of the abovementioned LPG cylinders owned by the aforementioned companies;

are in the possession and control of DANTE R. GUTIERREZ, LOURDES D. GUTIERREZ, JAMES D. GUTIERREZ and/or OCCUPANTS OF CAPITOL ALLIED TRADING & TRANSPORT (CATT) GAS REFILLING PLANT, located at Azucena Street, Longos, Malabon, Metro Manila, and which are being kept, displayed, and/or stored at the above-mentioned address.

"You are hereby commanded to make an immediate search, at any time of the day or night, of the premises above-described and to search for, and seize, the above-described personal properties which are the subject of the aforesaid offense.

"As requested, you are hereby authorized to retain temporary custody of the seized items, to be stored at No. 3385 Lubiran Street, Bacood, Old Sta. Mesa, Manila, and to produce the same upon order of this Honorable Court or as lawfully directed by any other competent court.

"You are further directed to submit a return of this warrant within ten (10) days from today."<sup>[2]</sup>

Also on March 5, 2004, public respondent issued Search Warrant No. 04-5052<sup>[3]</sup>, the contents of which are substantially the same as the aforequoted search warrant, but specifically for violation of Section 2(c), in relation to Section 4 of Batas Pambansa Blg. 33, as amended by Presidential Decree No. 1865.

Pursuant to the said warrants, agents of the National Bureau of Investigation (NBI, for brevity) conducted on March 5, 2004, at about 5:15 p.m., a search and seizure operation in the premises of CATT Gas.

On March 11, 2004, petitioner Gutierrez, through counsel, requested from the branch clerk of court of the RTC the complete records of the application for search warrants. However, upon a perusal of the records of the case, petitioner's counsel discovered that there was no transcript of the searching questions and answers attached to the records of Search Warrants Nos. 04-5051 and 04-5052. The petitioner obtained a copy of the transcript of the questions and answers only on March 16, 2004.

On July 15, 2004, there still being no criminal action filed against the petitioner before a court of competent jurisdiction, he filed with the sala of the respondent judge an omnibus motion (to quash search warrant and to exclude and return illegally seized documents)<sup>[4]</sup> on the following grounds –

- A. SEARCH WARRANT NO. 04-5052 IS A GENERAL WARRANT OR "SCATTER-SHOT WARRANT" AS IT DOES NOT SPECIFY THE OFFENSE FOR WHICH IT WAS ISSUED.
- B. SEARCH WARRANT[S] NOS. 04-5051 AND 04-5052 ARE GENERAL WARRANTS AS THEY DO NOT PARTICULARLY DESCRIBE THE PERSONS AND THINGS TO BE SEIZED BUT GENERALLY INCLUDES ALL PERSONS OR OCCUPANTS PRESENT IN THE PLACE TO BE SEARCHED AND ALL THINGS USED EVEN IN THE CONDUCT OF THE LEGITIMATE BUSINESS OF THE RESPONDENT.
- C. SEARCH WARRANT[S] NOS. 04-5051 AND 04-5052 WERE ISSUED WITHOUT PROBABLE CAUSE AND/OR THE PERSON WHO APPLIED FOR THEM HAD NO PERSONAL KNOWLEDGE OF THE APPLICATION FOR SEARCH WARRANT.
- D. SEARCH WARRANT[S] NOS. 04-5051 AND 04-5052 ARE UNREASONABLE SEARCH WARRANTS BECAUSE THEY WERE IMPLEMENTED BY THE POLICE (NBI) IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF RESPONDENT AGAINST UNLAWFUL SEARCH WARRANT.

E. SEARCH WARRANTS NOS. 04-5051 AND 04-5052 WERE ISSUED IN VIOLATION OF THE RULE THAT SEARCHING QUESTIONS AND ANSWERS CONDUCTED BY THE JUDGE ON THE APPLICANT AND HIS WITNESS MUST BE ATTACHED TO THE RECORDS OF THE APPLICATION FOR SEARCH WARRANT.

The motion was opposed by applicant NBI Sr. Agent Marvin E. De Jemil and private complainants Shellane Dealers Association, Petron Gasul Dealers Association and Totalgaz Dealers Association.

### **The Ruling of the RTC**

On December 8, 2004, the RTC issued a Joint Order<sup>[5]</sup> partly granting petitioner's motion to quash. It ordered the quashal of S.W. No. 04-5052 because the warrant failed to conform to the requisite singleness of offense, given the fact that Section 2 (c) of B.P. Blg. 33 speaks of "underdelivery or underfilling beyond authorized limits in the sale of petroleum products..."

The RTC however maintained the validity of S.W. No. 04-5051 after finding that it was not a general warrant as the descriptions therein of the things to be seized were adequate, that the applicant and his witnesses had personal knowledge of the alleged illegal act imputed against CATT Gas, that its implementation was done in accordance with the constitutional rights of the petitioner, and that the search warrant was issued only after the conduct of searching questions and answers. Thus, the dispositive portion of the order reads –

"ACCORDINGLY, for the reasons aforestated, Search Warrant No. 04-5052 is hereby ordered quashed. The applicant and the private complainants are hereby directed to return to the respondent the items seized pursuant to the said warrant.

"The Motion to Quash Search Warrant No. 04-5051 is hereby denied for lack of merit.

"SO ORDERED."<sup>[6]</sup>

Petitioner's motion for reconsideration was denied via an Order<sup>[7]</sup> dated April 14, 2005. Hence, the instant petition for *certiorari* and prohibition.

### **The Instant Petition**

Petitioner Dante Gutierrez claims that public respondent judge acted arbitrarily, capriciously and with grave abuse of discretion amounting to lack or excess of jurisdiction when he –

A. DENIED PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 04-5051 AND RULED THAT THE SUBJECT SEARCH WARRANT IS NOT A GENERAL WARRANT DESPITE EVIDENCE TO THE CONTRARY;

B. DENIED PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 04-5051 AND DECLARED THAT THE SUBJECT SEARCH WARRANT WAS ISSUED WITH

PROBABLE CAUSE AND/OR THE PERSON WHO APPLIED FOR IT HAS PERSONAL KNOWLEDGE OF THE APPLICATION FOR SEARCH WARRANT;

- C. DENIED PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 04-5051 AND DECREED THAT THE SUBJECT SEARCH WARRANT DID NOT VIOLATE THE CONSTITUTIONAL RIGHTS OF PETITIONER AGAINST UNLAWFUL SEARCH WARRANT AND ITS IMPLEMENTATION IS REASONABLE;
- D. DENIED PETITIONER'S MOTION TO QUASH AND MOTION FOR RECONSIDERATION WITHOUT ANY FINDINGS OF FACTS ON THE ISSUES RAISED THEREIN, CONTRARY TO SUBSTANTIVE AND PROCEDURAL LAW; and
- E. DENIED PETITIONER'S MOTION TO QUASH SEARCH WARRANT NO. 04-5051 AND IN FINDING THAT THE SUBJECT SEARCH WARRANT WAS NOT ISSUED IN VIOLATION OF THE RULE THAT SEARCHING QUESTIONS AND ANSWERS CONDUCTED BY THE JUDGE ON THE APPLICANT AND HIS WITNESS MUST BE ATTACHED TO THE RECORDS OF THE APPLICATION FOR SEARCH WARRANT.

### **This Court's Ruling**

After due study, this Court finds the instant petition bereft of merit. Taking into account the prevailing law and jurisprudence on the matter of issuance and implementation of search warrants, we hold that no grave abuse of discretion amounting to lack or excess of jurisdiction was committed by the respondent judge in denying petitioner's motion to quash Search Warrant No. 04-5051.

The laws applicable to the instant case are Sections 4, 5, 6 and 8, Rule 126 of the 2000 Rules on Criminal Procedure, which read–

**Sec. 4. Requisites for issuing search warrant.** – A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

**Sec. 5. Examination of complainant; record.** – The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

**Sec. 6. Issuance and form of search warrant.** – If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules.

**Sec. 8. Search of house, room, or premises to be made in presence of two witnesses.** – No search of a house, room, or any