

EN BANC

[G.R. No. 94902-06, April 21, 1999]

**BENJAMIN V. KHO AND ELIZABETH ALINDOGAN, PETITIONERS,
VS. HON. ROBERTO L. MAKALINTAL AND NATIONAL BUREAU OF
INVESTIGATION, RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

This is a petition for *certiorari* assailing the Order, dated July 26, 1990, of Branch LXXVII of the Metropolitan Trial Court of Paranaque, which denied petitioners' Motion to Quash Search Warrants emanating from the same Court. Petitioners sought to restrain the respondent National Bureau of Investigation (NBI) from using the objects seized by virtue of such warrants in any case or cases filed or to be filed against them and to return immediately the said items, including the firearms, ammunition and explosives, radio communication equipment, hand sets, transceivers, two units of vehicles and motorcycle.

The antecedent facts are as follows:

On May 15, 1990, NBI Agent Max B. Salvador applied for the issuance of search warrants by the respondent Judge against Benjamin V. Kho, now petitioner, in his residence at No. 45 Bb. Ramona Tirona St., BF Homes, Phase I, Paranaque. On the same day, Eduardo T. Arugay, another NBI agent, applied with the same court for the issuance of search warrants against the said petitioner in his house at No. 326 McDivitt St., Bgy. Moonwalk, Paranaque. The search warrants were applied for after teams of NBI agents had conducted a personal surveillance and investigation in the two houses referred to on the basis of confidential information they received that the said places were being used as storage centers for unlicensed firearms and "chop-chop" vehicles. Respondent NBI sought for the issuance of search warrants in anticipation of criminal cases to be instituted against petitioner Kho.

On the same day, the respondent Judge conducted the necessary examination of the applicants and their witnesses, after which he issued Search Warrant Nos. 90-11, 90-12, 90-13, 90-14, and 90-15.

On the following day, May 16, 1990, armed with Search Warrant Nos. 90-11 and 90-12, NBI agents searched subject premises at BF Homes, Paranaque, and they recovered various high-powered firearms and hundreds of rounds of ammunition. Meanwhile, another search was conducted at the house at No. 326 McDivitt St. Bgy. Moonwalk, Paranaque, by another team of NBI agents using Search Warrant Nos. 90-13, 90-14 and 90-15. The said second search yielded several high-powered firearms with explosives and more than a thousand rounds of ammunition. The simultaneous searches also resulted in the confiscation of various radio and telecommunication equipment, two units of motor vehicles (Lite-Ace vans) and one

motorcycle. Upon verification with the Firearms and Explosives Unit in Camp Crame, the NBI agents found out that no license has ever been issued to any person or entity for the confiscated firearms in question. Likewise, the radio agents found out that no license has ever been issued to any person or entity for the confiscated firearms in question. Likewise, the radio trancers recovered and motor vehicles seized turned out to be unlicensed and unregistered per records of the government agencies concerned.

On May 22, 1990, the raiding teams submitted separate returns to the respondent Judge requesting that the items seized be in the continued custody of the NBI (Annexes "O", "P", and "Q", Petition).

On May 28, 1990, the petitioners presented a Motion to Quash the said Search Warrants, contending that:

1. The subject search warrants were issued without probable cause;
2. The same search warrants are prohibited by the Constitution for being general warrants;
3. The said search warrants were issued in violation of the procedural requirements set forth by the Constitution;
4. The search warrants aforesaid were served in violation of the Revised Rules of Court; and
5. The objects seized were all legally possessed and issued.

On July 26, 1990, respondent Judge issued the assailed Order denying the said Motion To Quash interposed by petitioners.

Petitioners question the issuance of subject search warrants, theorizing upon the absence of any probable cause therefor. They contend that the surveillance and investigation conducted by NBI agents within the premises involved, prior to the application for the search warrants under controversy, were not sufficient to vest in the applicants personal knowledge of facts and circumstances showing or indicating the commission of a crime by them (petitioners).

Petitioners' contention is untenable. Records show that the NBI agents who conducted the surveillance and investigation testified unequivocally that they saw guns being carried to and unloaded at the two houses searched, and motor vehicles and spare parts were stored therein. In fact, applicant Max B. Salvador declared that he personally attended the surveillance together with his witnesses (TSN, May 15, 1990, pp. 2-3), and the said witnesses personally saw the weapons being unloaded from motor vehicles and carried to the premises referred to. NBI Agent Ali Vargas testified that he actually saw the firearms being unloaded from a Toyota Lite-Ace van and brought to the aforementioned house in BF Homes, Paranaque because he was there inside the compound posing as an appliance agent (TSN, May 15, 1990, pp. 4-5). It is therefore decisively clear that the application for the questioned search warrants was based on the personal knowledge of the applicants and their witnesses.

In the case of *Central Bank v. Morfe* (20 SCRA 507), this Court ruled that the question of whether or not a probable cause exists is one which must be determined in light of the conditions obtaining in given situations. In *Luna v. Plaza* (26 SCRA 310), it held that the existence of a probable cause depends to a large extent upon the finding or opinion of the judge who conducted the required examination of the applicants and the witnesses.

After a careful study, the Court discerns no basis for disturbing the findings and conclusions arrived at by the respondent Judge after examining the applicants and witnesses. Respondent judge had the singular opportunity to assess their testimonies and to find out their personal knowledge of facts and circumstances enough to create a probable cause. The Judge was the one who personally examined the applicants and witnesses and who asked searching questions vis-a-vis the applications for search warrants. He was thus able to observe and determine whether subject applicants and their witnesses gave accurate accounts of the surveillance and investigation they conducted at the premises to be searched. In the absence of any showing that respondent judge was recreant of his duties in connection with the personal examination he so conducted on the affiants before him, there is no basis for doubting the reliability and correctness of his findings and impressions.

Petitioners brand as fatally defective and deficient the procedure followed in the issuance of subject search warrants, reasoning out that the same did not comply with constitutional and statutory requirements. They fault respondent Judge for allegedly failing to ask specific questions they deem particularly important during the examination of the applicants and their witnesses. To buttress their submission, petitioners invite attention to the following question, to wit:

"How did you know that there are unlicensed firearms being kept by Benjamin Kho at No. 45 Bb. Ramona Tirona St., Phase I, BF Homes, Paranaque, Metro Manila?" (TSN, Ali Vargas, May 15, 1990, p. 4)

Petitioners argue that by propounding the aforequoted question, the respondent Judge assumed that the firearms at the premises to be searched were unlicensed, instead of asking for a detailed account of how the NBI agents came to know that the firearms being kept thereat were unlicensed.

This stance of petitioners is similarly devoid of any sustainable basis. Nothing improper is perceived in the manner the respondent Judge conducted the examination of subject applicants for search warrants and their witnesses. He personally examined them under oath, and asked them searching questions on the facts and circumstances personally known to them, in compliance with prescribed procedure and legal requirements. It can be gleaned that the sworn statements and affidavits submitted by the witnesses were duly attached to the pertinent records of the proceedings. It was within the discretion of the examining Judge to determine what questions to ask the witnesses so long as the questions asked are germane to the pivot of inquiry - the existence or absence of a probable cause.

Petitioners claim that subject search warrants are general warrants proscribed by the Constitution. According to them, the things to be seized were not described and detailed out, i.e. the firearms listed were not classified as to size or make, etc.