

THIRD DIVISION

[CA-G.R. SP NO. 132993, March 25, 2015]

TOMAS P. DE VERA, PETITIONER, VS. HON. ANDREW P. DULNUAN, AS PRESIDING JUDGE OF RTC-BRANCH 31, CABARROGUIS, QUIRINO, AND OFFICE OF THE PROVINCIAL PROSECUTOR, PROVINCE OF QUIRINO, RESPONDENTS.

DECISION

BARZA, J.:

This Petition for Certiorari under Rule 65 of the Rules of Court seeks to nullify and set aside the Resolution^[1] dated 27 September 2013 of the public respondent, Hon. Andrew P. Dulnuan, Presiding Judge of Branch 31, Regional Trial Court, Cabarroguis, Quirino, denying petitioner's Motion to Quash Search Warrant and to Suppress Evidence in Search Warrant No. 03-2013. The petition also assails the Resolution dated 8 November 2013 of the public respondent, denying the motion for reconsideration.

The facts are, as follows:

Police Officers Oliver B. Sibayan, Mervin delos Santos and Dick Navalta of the Philippine National Police (PNP), Diffun Police Station in Diffun, Quirino, filed an Application for Search Warrant^[2] on 8 August 2013 before the Regional Trial Court of Cabarroguis, Quirino, against petitioner Tomas De Vera a.k.a Oting for Violation of PD 1866, as amended by R.A. No. 8296 (Illegal Possession of Firearm and Ammunition).

The application alleges that the police officers after having been informed and after conducting the corresponding verification and investigation, confirmed that the petitioner, of legal age and a resident of Barangay Cajel, Diffun, Quirino, has in his possession and control properties which are subject of the offense, to wit:

- a. One (1) Ingram automatic caliber 9mm;
- b. One (1) NORINCO .45 caliber pistol with SN 648232;
- c. Two (2) Shotguns (12 gauge);
- d. One (1) 22 caliber long barrel with silencer
- e. One (1) 32 caliber pistol; and
- f. Several rounds of live ammunitions.

The application further alleges that the said police officers have reason to believe that a Search Warrant should be issued to enable them to take custody and bring to the court the above-described items. On the same date, after personally examining under oath the applicants and their deponent witness Julionito Noquiao y Oflos^[3] that there is probable cause to believe that a violation of Violation of PD 1866, as amended by R.A. No. 8296, has been committed and is still being committed and that there are good and sufficient reasons to believe that the petitioner has in his direct possession and control the above-described items, respondent Judge granted the application and issued the search warrant.^[4]

On even date at 10:00 o'clock in the morning, the police officers effected the search on petitioner's residence and junkshop located at Barangay Cajel, Diffun, Quirino. In their Joint Affidavit of Arrest^[5] Police Officers Delos Santos, Wigan, Jr., Elegado and Lioad stated that the search, which was witnessed by Brgy. Captain Samuel Abenoja and Edwin Ducos of DWRV, yielded the following properties without legal documents, to wit:

1. One (1) pc Colt Cal. .32 revolver with engraved serial number 429346;
2. One (1) pc homemade Cal. 9mm. pistol;
3. One (1) pc Norinco Cal/.45 pistol with engraved serial number 648232;
4. One (1) magazine for 9mm with Six (6) live ammunitions;
5. One (1) Magazine for Cal. 45 with Five (5) pcs live ammunitions;
6. One (1) pc Magazine for Cal. 22 with Four (4) pcs live ammunitions;
7. One (1) pc Armscor air pistol converted Cal. 22;
8. One (1) pcs Armscor air pistol converted Cal. 22;
9. One (1) pc live ammunition for Cal. 30;
10. One (1) pc fired empty cartridge for Cal. 30;
11. One (1) pc fired cartridge for Cal. 22;
12. One (1) pc fired cartridge for Cal. 38;
13. One (1) pc live ammunition for magnum cal. 22;
14. Two (2) pcs live ammunitions for Cal. 22;
15. One (1) pc scope with markings Tasco 4x20;
16. Two (2) pcs unserviceable air soft pistol with one (1) pc magazine;
17. One (1) side holster for 9mm. pistol
18. Two (2) pcs live ammunitions for gauge 12 shotgun and assorted parts of air soft.

After the conduct of the search, all the seized and confiscated items were displayed on a table in the presence of the petitioner, and the two (2) witnesses, Brgy. Capt. Abenoja and Mr. Ducos, for inventory. When the searching team handed a copy of the certification of orderly search and receipt/inventory of property seized to the petitioner, the latter refused to receive the same. The barangay captain was requested by Police Officer Elegado to receive the copy. Thereafter, the police officers effected the arrest of the petitioner.

Petitioner sought quashal in a Motion to Quash Search Warrant with Motion to Suppress Seized Evidence^[6] on the following grounds:

1. The search warrant is a nullity for want of probable cause that respondent (herein petitioner) violated PD 1866, as amended by

R.A. No. 8296 in violation of Sec. 3, Rule 126 of the New Rules of Criminal Procedure; and

2. The search warrant is null and void considering that the applicants and their lone witness have no personal knowledge as regards violation of PD 1866, as amended by R.A. No. 8296 as prescribed under the Rules of Criminal Procedure.

Petitioner asserts that there is no probable cause to issue the search warrant in this case considering that the records of the case is bereft of any proof that petitioner does not have the license or permit to possess. At the time of the application for the search warrant, all the applicant police officers did not have personal knowledge of the fact that the petitioner had no license to possess firearms as required by law. The police officers allegedly failed to state this in their testimonies. They also failed to attach a certification from the Firearms and Explosives Office of the PNP. As argued, jurisprudence^[7] dictates that the certification is the best evidence obtainable to prove that petitioner has no license or permit to possess a firearm. There was also no explanation given why said certification was not presented, or even no longer necessary, during the application for the warrant. Such vital evidence, according to the petitioner, was simply ignored in the issuance of the search warrant, which made the said warrant null and void.

In further praying for the quashal of the search warrant, the petitioner also argues that the police officers who applied for the said warrant have no personal knowledge as to whether or not the petitioner is in possession of the firearms stated in their application. It would appear from their testimonies that they were informed by their assets. Petitioner also points out that the lone deposition witness in the person of Julionito Nocquiao, is a false or perjured witness whose identity does not exist as duly certified by the Barangay Captain of Gayong, Cordon, Isabela, where he allegedly resides.

The Office of the Provincial Prosecutor of Quirino filed its Comment on the Motion to Quash^[8]. In disagreeing with the Motion, the Prosecution points out that there is no Information filed yet in this case. As explained, a motion to quash is the proper way of objecting to an Information for insufficiency on its face in point of law, or for defects which are apparent in the face of the information. It is also pointed out by the Prosecution that even if the Motion be treated as a Motion to Suppress Evidence under the Rules, still the said motion cannot stand the test of scrutiny as the petitioner's allegations in the said motion are matters of defense which are best ventilated in a full blown trial.

As regards the allegation that no probable cause exists in the issuance of the search warrant, the Prosecution alleged that the police authorities were already armed with a document that the petitioner is not a licensed/registered firearm holder prior to the application of the search warrant on 9 August 2013. A memorandum submitted by the PNP Intelligence Group at Camp Adduru, Tuguegarao City, dated 27 June 2013 was issued by the Firearms and Explosive Office of the Quirino Police Provincial Office on 1 August 2013, certifying to the effect that petitioner Tomas De Vera of Brgy. Cajel, Diffun, Quirino, is not a licensed/registered firearm holder.

Anent the allegation that the search warrant issued by the court in this case was based on the perjured statement of a non-existing person, the Prosecution argues

that whether the name of the deponent is fictitious or not, the same could not in any way affect the material statement contained in the allegations that petitioner has in his possession unlicensed firearms. It is also submitted that the name of the deponent, whether fictitious or not, would not greatly affect the application for search warrant as the same is not a material matter, especially so that an informer's identity is never divulged because of the need to preserve their cover so they can continue their invaluable service to the police.

In the assailed Resolution of the public respondent dated 27 September 2013, the public respondent judge held that there is probable cause for the issuance of the search warrant in this case. As explained, even prior to the application of the search warrant, the police authorities were already armed with a document from the PNP to the effect that the petitioner is not a licensed or registered firearm holder. This is supported by the personal knowledge of deponent Julionito Nocquiao that the petitioner is in possession of the firearms subject of the search warrant.

The public respondent judge also held that as regards the alleged false and perjured witness in the person of Julionito Nocquiao, it has already been ruled^[9] that, such allegation even if true and credible, is not at all material or necessary to the determination of probable cause. In agreement with the comment made by the prosecution, the public respondent judge explained that the material matter, that is, the main fact which is the subject of inquiry by the court in this case, is whether the petitioner has in his possession unlicensed firearms. The name of the deponent, whether fictitious or not, should be given scant consideration as the same is not a material matter for purposes of procuring a search warrant.

Reconsideration^[10] was sought but was subsequently denied in the Resolution dated 8 November 2013.

Hence, this petition on the following issues:

I

THE PUBLIC RESPONDENT JUDGE HAS COMMITTED GRAVE ABUSE OF DISCRETION OR HAS EXCEEDED HIS JURISDICTION IN REFUSING TO QUASH SEARCH WARRANT IT ISSUED AGAINST TOMAS DE VERA ALIAS OTING ON 8 AUGUST 2013 FOR VIOLATION OF PD 1866 AS AMENDED BY RA 8294 ON THE GROUND THAT PROBABLE CAUSE HAS NOT BEEN SUFFICIENTLY ESTABLISHED.

II

THE OFFICE OF THE PROVINCIAL PROSECUTOR OF THE PROVINCE OF QUIRINO IS ACTING WITH GRAVE ABUSE OF DISCRETION OR EXCEEDED HIS JURISDICTION IN CONTINUING WITH THE PROCEEDINGS IN NPS DOCKET NO. II-09-INQ-13G-000034 AGAINST TOMAS P. DE VERA ON THE BASIS OF ILLEGALLY SEIZED PIECES OF EVIDENCE.

Petitioner maintains that the search warrant issued by the public respondent judge is not valid and that there is no basis for the criminal proceedings with the Provincial Prosecutor of the Province of Quirino.