

## TWENTY-SECOND DIVISION

[ CA-G.R. SP NO. 04198-MIN, January 23, 2014 ]

**TEOFILO LABADOR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HON. BENJAMIN P. ESTRADA IN HIS CAPACITY AS PRESIDING JUDGE, RTC BRANCH 9, MALAYBALAY CITY, RESPONDENTS.**

### DECISION

**INTING, J.:**

Before Us is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure praying that the Order dated January 14, 2011 denying the motion to quash search warrant and to exclude illegally seized evidence issued by public respondent Judge Benjamin P. Estrada of Regional Trial Court (RTC), Branch 9, Malaybalay City, Bukidnon, be annulled and set aside.

The facts<sup>[1]</sup> of the case are as follows:

On August 6, 2009, PO2 Dennis Dahino Penaso applied with the Regional Trial Court (RTC) of Malaybalay City for the issuance of a search warrant for illegal *suertres* tally sheets with different number combinations, illegal *suertres* tips and stubs, illegal *suertres* bet money, single motorcycle used as transportation for illegal *suertres* operation and other illegal *suertres* paraphernalia allegedly found at the residence of petitioner Teofilo Labador at Purok 4 Norte, Don Carlos, Bukidnon.<sup>[2]</sup>

Later that same day, Executive Judge Josefina Gentiles Bacal issued Search Warrant No. 041-09 commanding the Special Operation Group (SOG) of the Philippine National Police (PNP) to "make an immediate search during daytime or nighttime, under extraordinary circumstances, with due regard to the constitutional rights of the suspect in his person and in the whole place/ premises, per submitted location map attached as Annex 'A' which is the sketch plan and forthwith seize and take possession of the above-described items and to bring items to the Court to be dealt with as the Court directs within ten (10) days from today."<sup>[3]</sup>

On the strength of this warrant, members of the SOG-PNP of Malaybalay City, searched petitioner's house on the same day it was issued. They were able to seize the following items:

1. Tally board (control sheet);
2. Thirty (30) pieces illegal *suertres* tally sheet with number entry combination dated August 6, 2009;
3. Eight Hundred Pesos (Php 800.00) bet money in different denomination;
4. Five (5) pieces Nokia cellphone;
5. Seven (7) pieces assorted calculator;
6. One (1) unit stapler;
7. Eleven (11) pieces of ballpen;

8. One (1) piece of staple remover; and
9. Eight (8) pieces of booklet intermediate lengthwise paper utilized as record paper.<sup>[4]</sup>

The PNP Officers then issued a receipt of the items seized but the petitioner refused to sign it.

On August 31, 2010, petitioner filed a Motion to Quash Search Warrant and Exclude Illegally Seized Evidence for lack of probable cause before the Regional Trial Court (RTC), Branch 9, Malaybalay City, Bukidnon presided by public respondent Judge Benjamin P. Estrada.<sup>[5]</sup>

Thereafter, on January 14, 2011, the public respondent issued the assailed Order denying the Motion to Quash Search Warrant.<sup>[6]</sup>

Hence, this Petition.

### **Our Ruling**

The petition is bereft of merit.

Petitioner contends that the findings of the public respondent is grounded on speculation and is patently unsupported by any single evidence. According to petitioner, applicant Dennis Dahino Penaso and his witness, PO1 Yodilito Aguirre Gabrinez, did not personally witness him instigate any illegal gambling in the vicinity and that the only basis for the application of the search warrant was the alleged information obtained from the female passenger of the motorcycle.

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG) avers that a Petition for Certiorari under Rule 65 is not a proper remedy in the case at bar. The OSG opines that the remedy against an adverse Order of the court is not to resort forthwith to certiorari but to continue with the case in due course, i.e., to move for its reconsideration, then to file the instant petition in the manner authorized by law.

It also contends that respondent Judge acted well within his jurisdiction, with no abuse of discretion, when he issued the assailed Order denying the Motion to Quash Search Warrant and to Exclude Illegally Seized Evidence.

Anent the first contention raised by the OSG, although the general rule is that a *motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a quo had no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were ex parte,*