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gestation from the date of the incident on March 1, 1968, had already elapsed, we believe that that part of the judgment should be deleted.

WHEREFORE, the judgment under review is affirmed with the modifications indicated above. Appellant is accordingly sentenced to the extreme penalty of death and ordered to indemnify Leonora Padero in the sum of P12,000.00, with costs.

Let a copy of this decision be furnished the Secretary of Justice for whatever action he may deem necessary and proper in connection with Demetrio Perez, who appears to be still at large.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and *Makasiar, JJ.,* concur.

[G.R. No. L-32409. February 27, 1971]

BACHE & CO. (PHIL.), INC., and FREDERICK E. SEGGERMAN, *petitioners, vs.* HON. JUDGE VIVENCIO M. RUIZ, MISAEL P. VERA, in his capacity as Commissioner of Internal Revenue, ARTURO LOGRONIO, RODOLFO DE LEON, GAVINO VELASQUEZ, MIMIR DELLOSA, NICANOR ALCORDO, JOHN DOE, JOHN DOE, JOHN DOE, and JOHN DOE, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; PROBABLE CAUSE MUST BE DETERMINED PERSONALLY BY THE JUDGE; NOT SATISFIED IN CASE AT BAR.**— The examination of the complainant and the witnesses he may produce, required by Art. III, Sec. 1, par. 3, of the Constitution, and by Secs. 3 and 4, Rule 126 of the Revised Rules of Court, should be conducted by the judge himself and not by

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others. The phrase "which shall be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce," appearing in the said constitutional provision, was introduced by Delegate Francisco as an amendment to the draft submitted by the Sub-Committee of Seven. The implementing rule in the Revised Rules of Court, Sec. 4, Rule 126, is more emphatic and candid, for it requires the judge, before issuing a search warrant, to "personally examine on oath or affirmation the complainant and any witnesses he may produce x x x." Personal examination by the judge of the complainant and his witnesses is necessary to enable him to determine the existence or non-existence of a probable cause, pursuant to Art. III, Sec. 1, par 3, of the Constitution, and Sec. 3, Rule 126 of the Revised Rules of Court, both of which prohibit the issuance of warrants except "upon probable cause." The determination of whether or not a probable cause exists calls for the exercise of judgment after a judicial appraisal of facts and should not be allowed to be delegated in the absence of any rule to the contrary.

2. ID.; ID.; ID.; ID.; COMPLAINANT AND WITNESSES MUST BE PERSONALLY EXAMINED BY THE JUDGE.— In the case at bar, no personal examination at all was conducted by respondent Judge of the complainant (respondent de Leon) and his witness (respondent Logronio). While it is true that the complainant's application for search warrant and the witness' printed-form deposition were subscribed and sworn to before respondent Judge, the latter did not ask either of the two any question the answer to which could possibly be the basis for determining whether or not there was probable cause against herein petitioners. Indeed, the participants seem to have attached so little significance to the matter that notes of the proceedings before respondent Judge were not even taken. At this juncture it may be well to recall the salient facts. The transcript of stenographic notes (pp. 61-76, April 1, 1970, Annex J-2 of the Petition) taken at the hearing of this case in the court below shows that per instruction of respondent Judge, Mr. Eleodoro V. Gonzales, Special Deputy Clerk of Court, took the depositions of the complainant and his witness, and that stenographic notes thereof were taken by Mrs. Gaspar. At that time respondent Judge was at the sala hearing a case. After respondent Judge was through with the hearing, Deputy Clerk Gonzales, stenographer Gaspar, complainant de Leon and witness Logronio went to respondent Judge's chamber

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and informed the Judge that they had finished the depositions. Respondent Judge then requested the stenographer to read to him her stenographic notes. Thereafter, respondent Judge signed the search warrant. The participation of respondent Judge in the proceedings which led to the issuance of Search Warrant No. 2-M-70 was thus limited to listening to the stenographer's reading of her notes, to a few words of warning against the commission of perjury, and to administering the oath to the complainant and his witness. This cannot be considered as a personal examination. If there was an examination at all of the complainant and his witness, it was the one conducted by the Deputy Clerk of Court. But, as already stated, the Constitution and the rules require a personal examination by the judge. It was precisely on account of the intention of the delegates to the Constitutional Convention to make it a duty of the issuing judge to personally examine the complainant and his witnesses that the question of how much time would be consumed by the judge in examining them came up before the Convention, as can be seen from the record of the proceedings quoted above. The reading of the stenographic notes to respondent Judge did not constitute sufficient compliance with the constitutional mandate and the rule; for by that manner respondent Judge did not have the opportunity to observe the demeanor of the complainant and his witness, and to propound initial and follow-up questions which the judicial mind, on account of its training, was in the best position to conceive. These were important in arriving at a sound inference on the all-important question of whether or not there was probable cause.

3. **ID.; ID.; ID.; MUST BE ISSUED FOR ONE SPECIFIC OFFENSE; CASE AT BAR NOT A CASE OF.**— The search warrant in question was issued for at least four distinct offenses under the Tax Code. The first is the violation of Sec. 46(a), Sec. 72 and Sec. 73 (the filing of income tax returns), which are interrelated. The second is the violation of Sec. 53 (withholding of income taxes at source). The third is the violation of Sec. 208 (unlawful pursuit of business or occupation); and the fourth is the violation of Sec. 209 (failure to make a return of receipts, sales, business or gross value of output actually removed or to pay the tax due thereon). Even in their classification the six above-mentioned provisions are embraced in two different titles: Secs. 46(a), 53, 72, and 73 are under Title II (Income Tax); while Secs. 208 and 209 are under Title V (Privilege Tax on Business and Occupation).

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4. **ID.; ID.; ID.; MUST PARTICULARLY DESCRIBE THE THINGS TO BE SEIZED.**— The documents, papers and effects sought to be seized are described in Search Warrant No. 2-M-70 in this manner: "Unregistered and private books of accounts (ledgers, journals, columnars, receipts and disbursements books, customers ledgers); receipts for payments received; certificates of stocks and securities; contracts, promissory notes and deeds of sale; telex and coded messages; business communications; accounting and business records; checks and check stubs; records of bank deposits and withdrawals; and records of foreign remittances, covering the years 1966 to 1970." The description does not meet the requirement in Art. III, Sec. 1, of the Constitution, and of Sec. 3, Rule 126 of the Revised Rules of Court, that the warrant should particularly describe the things to be seized. While the term "all business transactions" does not appear in Search Warrant No. 2-M-70, the said warrant nevertheless tends to defeat the major objective of the Bill of Rights, i.e., the elimination of general warrants, for the language used therein is so all-embracing as to include all conceivable records of petitioner corporation, which, if seized, could possibly render its business inoperative.

5. **ID.; ID.; ID.; ID.; PURPOSE THEREOF.**— A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (People *vs.* Rubio, 57 Phil. 384); or when the description expresses a conclusion of fact - not of law - by which the warrant officer may be guided in making the search and seizure (*idem.*, dissent of Abad Santos, *J.*); or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued (Sec. 2, Rule 126, Revised Rules of Court). The herein search warrant does not conform to any of the foregoing tests. If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence. In this event, the description contained in the herein disputed warrant should have mentioned, at least, the dates, amounts, persons, and other pertinent data regarding the receipts of payments, certificates of stocks and securities, contracts, promissory notes, deeds of sale, messages and communications, checks, bank deposits and withdrawals, records of foreign remittances, among others, enumerated in the warrant.

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6. **ID.; SPECIAL CIVIL ACTION; CERTIORARI; MOTION FOR RECONSIDERATION NOT A PREREQUISITE WHEN THE QUESTIONS TO BE RAISED ARE THE SAME AS THOSE RAISED IN AND PASSED UPON BY THE COURT.**— Respondents contend that certiorari does not lie because petitioners failed to file a motion for reconsideration of respondent Judge's order of July 29, 1970. The contention is without merit. In the first place, when the questions raised before this Court are the same as those which were squarely raised in and passed upon by the court below, the filing of a motion for reconsideration in said court before certiorari can be instituted in this Court is no longer a prerequisite. (Pajo, etc., et al. *vs.* Ago, et al., 108 Phil., 905). In the second place, the rule requiring the filing of a motion for reconsideration before an application for a writ of certiorari can be entertained was never intended to be applied without considering the circumstances. (Matutina *vs.* Buslon, et al., 109 Phil., 140) In the case at bar time is of the essence in view of the tax assessments sought to be enforced by respondent officers of the Bureau of Internal Revenue against petitioner corporation, on account of which immediate and more direct action becomes necessary. (Matute *vs.* Court of Appeals, et al., 26 SCRA 768) Lastly, the rule does not apply where, as in this case, the deprivation of petitioners' fundamental right to due process taints the proceeding against them in the court below not only with irregularity but also with nullity. (Matute *vs.* Court of Appeals, et al., *supra)*

7. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE; EXTENDS TO CORPORATION.**— It is next contended by respondents that a corporation is not entitled to protection against unreasonable searches and seizures. Again, we find no merit in the contention. "Although, for the reasons above stated, we are of the opinion that an officer of a corporation which is charged with a violation of a statute of the state of its creation, or of an act of Congress passed in the exercise of its constitutional powers, cannot refuse to produce the books and papers of such corporation, we do not wish to be understood as holding that a corporation is not entitled to immunity, under the 4th Amendment, against *unreasonable* searches and seizures. A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body it waives no

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constitutional immunities appropriate to such body. Its property cannot be taken without compensation. It can only be proceeded against by due process of law, and is protected, under the 14th Amendment, against unlawful discrimination. x x x." (Hale *v.* Henkel, 201 U.S. 43, 50 L. ed. 652) "In Linn *v.* United States, 163 C.C.A. 470, 251 Fed. 476, 480, it was thought that a different rule applied to a corporation, on the ground that it was not privileged from producing its books and papers. But the rights of a corporation against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way." (Silverthorne Lumber Company, et al. *v.* United States of America, 251 U.S. 385, 64 L. ed. 319) In Stonehill, et al. *vs.* Diokno, et al., *supra*, this Court impliedly recognized the right of a corporation to object against unreasonable searches and seizures, thus: "As regards the first group, we hold that petitioners herein have *no* cause of action to assail the legality of the contested warrants and of the seizures made in pursuance thereof, for the simple reason that said corporations have their respective personalities, separate and distinct from the personality of herein petitioners, regardless of the amount of shares of stock or of the interest of each of them in said corporations, and whatever the offices they hold therein may be. *Indeed, it is well settled that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties. Consequently, petitioners herein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to object to the admission of said papers in evidence belongs exclusively to the corporations, to whom the seized effects belong, and may not be invoked by the corporate officers in proceedings against them in their individual capacity.* x x x."

BARREDO, *J., concurring opinion:*

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; MUST NOT BE ISSUED FOR MORE THAN ONE SPECIFIC OFFENSE.**— Justice Barredo agrees with the ruling that the search warrants in question violates the specific injunction of Section 3, Rule 126 that "No search warrant shall issue for more than one specific offense." There is no question in

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his mind that, as very clearly pointed out by Mr. Justice Villamor, the phrase "for violation of Section 46(a) of the National Internal Revenue Code in relation to all other pertinent provisions thereof, particularly Section 53, 72, 73, 208 and 209" refers to more than one specific offense, considering that the violation of Section 53 which refers to withholding of income taxes at the sources, Section 208 which punishes pursuit of business or occupation without payment of the corresponding specific or privilege taxes, and Section 209 which penalizes failure to make a return of receipts sales, business or gross value output actually removed or to pay the taxes thereon in connection with Title V on Privilege Taxes on Business and Occupation can hardly be absorbed in a charge of alleged violation of Section 46(a), which merely requires the filing of income tax returns by corporations, so as to constitute with it a single offense. He perceives here the danger that the result of the search applied for may be used as basis not only for a charge of violating Section 46(a) but also and separately of Section 53, 208 and 209. Of course, it is to be admitted that Sections 72 and 73, also mentioned in the application, are really directly related to Section 46(a) because Section 72 provides for surcharges for failure to render returns and for rendering false and fraudulent returns and Section 73 refers to the penalty for failure to file returns or to pay the corresponding tax. Taken together, they constitute one single offense penalized under Section 73. He is not and cannot be in favor of any scheme which amounts to an indirect means of achieving that which is not allowed to be done directly. By merely saying that a party is being charged with violation of one section of the code in relation to a number of other sections thereof which in truth have no clear or direct bearing with the first is to him condemnable because it is no less than a shotgun device which trenches on the basic liberties intended to be protected by the unequivocal limitations imposed by the Constitution and the Rules of Court on the privilege to secure a search warrant with the aggravating circumstance of being coupled with an attempt to mislead the judge before whom the application for its issuance is presented.

2. **ID.; ID.; ID.; ID.; PURPOSE THEREOF; CASE AT BAR.**— Justice Barredo cannot close this brief concurrence without expressing his vehement disapproval of the action taken by respondent internal revenue authorities in using the documents and papers secured during the search, legality of which was pending resolution by the court, as basis of an assessment, no matter how highly motivated such

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action might have been. This smacks of lack of respect, if not contempt for the court and is certainly intolerable. At the very least, it appears as an attempt to render the court proceedings moot and academic, and dealing as this case does with constitutionally protected rights which are part and parcel of the basic concepts of individual liberty and democracy, the government agents should have been the first ones to refrain from trying to make a farce of these court proceedings. Indeed, it is to be regretted that the government agents and the court have acted irregularly, for it is highly doubtful if it would be consistent with the sacredness of the rights herein found to have been violated to permit the filing of another application which complies with the constitutional requirements above discussed and the making of another search upon the return of the papers and documents now in their illegal possession. This could be an instance wherein taxes properly due the State will probably remain unassessed and unpaid only because the ones in charge of the execution of the laws did not know how to respect basic constitutional rights and liberties.

APPEARANCES OF COUNSEL

San Juan, Africa, Gonzales & San Agustin for petitioners.

Sol. Gen. Felix Q. Antonio, Associate Sol. Gen. Crispin V. Bautista, Sol. Pedro A. Ramirez and *Special Atty. Jaime M. Maza* for respondents.

DECISION

VILLAMOR, *J.:*

This is an original action of certiorari, prohibition and mandamus, with prayer for a writ of preliminary mandatory and prohibitory injunction. In their petition Bache & Co. (Phil.), Inc., a corporation duly organized and existing under the laws of the Philippines, and its President, Frederick E. Seggerman, pray this Court to declare null and void Search Warrant No. 2-M-70 issued by respondent Judge on February 25, 1970; to order respondents to desist from enforcing the same and/or keeping the documents, papers and effects seized by virtue thereof, as well

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as from enforcing the tax assessments on petitioner corporation alleged by petitioners to have been made on the basis of the said documents, papers and effects, and to order the return of the latter to petitioners. We gave due course to the petition but did not issue the writ of preliminary injunction prayed for therein.

The pertinent facts of this case, as gathered from the record, are as follows:

On February 24, 1970, respondent Misael P. Vera, Commissioner of Internal Revenue, wrote a letter addressed to respondent Judge Vivencio M. Ruiz requesting the issuance of a search warrant against petitioners for violation of Section 46(a) of the National Internal Revenue Code, in relation to all other pertinent provisions thereof, particularly Sections 53, 72, 73, 208 and 209, and authorizing Revenue Examiner Rodolfo de Leon, one of herein respondents, to make and file the application for search warrant which was attached to the letter.

In the afternoon of the following day, February 25, 1970, respondent de Leon and his witness, respondent Arturo Logronio, went to the Court of First Instance of Rizal. They brought with them the following papers: respondent Vera's aforesaid letter-request; an application for search warrant already filled up but still unsigned by respondent de Leon; an affidavit of respondent Logronio subscribed before respondent de Leon; a deposition in printed form of respondent Logronio already accomplished and signed by him but not yet subscribed; and a search warrant already accomplished but still unsigned by respondent Judge.

At that time respondent Judge was hearing a certain case; so, by means of a note, he instructed his Deputy Clerk of Court to take the depositions of respondents de Leon and Logronio. After the session had adjourned, respondent Judge was informed that the depositions had already been taken. The stenographer, upon request of respondent Judge, read to him her stenographic notes; and thereafter, respondent Judge asked respondent Logronio to take the oath and warned him that if his deposition was found to be false and without legal basis, he could be charged for perjury. Respondent Judge signed respondent de Leon's

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application for search warrant and respondent Logronio's deposition, Search Warrant No. 2-M-70 was then signed by respondent Judge and accordingly issued.

Three days later, or on February 28, 1970, which was a Saturday, the BIR agents served the search warrant on petitioners at the offices of petitioner corporation on Ayala Avenue, Makati, Rizal. Petitioners' lawyers protested the search on the ground that no formal complaint or transcript of testimony was attached to the warrant. The agents nevertheless proceeded with their search which yielded six boxes of documents.

On March 3, 1970, petitioners filed a petition with the Court of First Instance of Rizal praying that the search warrant be quashed, dissolved or recalled, that preliminary prohibitory and mandatory writs of injunction be issued, that the search warrant be declared null and void, and that the respondents be ordered to pay petitioners, jointly and severally, damages and attorney's fees. On March 18, 1970, the respondents, thru the Solicitor General, filed an answer to the petition. After hearing, the court, presided over by respondent Judge, issued on July 29, 1970, an order dismissing the petition for dissolution of the search warrant. In the meantime, or on April 16, 1970, the Bureau of Internal Revenue made tax assessments on petitioner corporation in the total sum of P2,594,729.97, partly, if not entirely, based on the documents thus seized. Petitioners came to this Court.

The petition should be granted for the following reasons:

1. Respondent Judge failed to personally examine the complainant and his witness.

The pertinent provisions of the Constitution of the Philippines and of the Revised Rules of Court are:

"(3) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined 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 persons or things to be seized." (Art. III, Sec. 1, Constitution)

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"SEC. 3. *Requisites for issuing search warrant.*- A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the judge or justice of the peace 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 persons or things to be seized.

"No search warrant shall issue for more than one specific offense.

"SEC. 4. *Examination of the applicant.*- The judge or justice of the peace must, before issuing the warrant, personally examine on oath or affirmation the complainant and any witnesses he may produce and take their depositions in writing, and attach them to the record, in addition to any affidavits presented to him." (Rule 126, Revised Rules of Court.)

The examination of the complainant and the witnesses he may produce, required by Art. III, Sec. 1, par. 3, of the Constitution, and by Secs. 3 and 4, Rule 126 of the Revised Rules of Court, should be conducted by the judge himself and not by others. The phrase "which shall be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce," appearing in the said constitutional provision, was introduced by Delegate Francisco as an amendment to the draft submitted by the Sub-Committee of Seven. The following discussion in the Constitutional Convention (Laurel, Proceedings of the Philippine Constitutional Convention, Vol. III, pp. 755-757) is enlightening:

"SR. ORENSE. Vamos a dejar compañero, los piropos y vamos al grano.

En los casos de una necesidad de actuar immediatamente para que no se frustren los fines de la justicia mediante el registro inmediato y la incautación del cuerpo del delito, no cree Su Señoría que causaría cierta demora el procedimiento apuntado en su enmienda en tal forma que podria frustrar los fines de la justicia o si Su Señoría encuentra un remedio para estos casos con el fin de compaginar los fines de la justicia con los derechos del individuo en su persona, bienes etcetera, etcetera.

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"SR. FRANCISCO. No puedo ver en la práctica el caso hipotético que Su Señoría pregunta por la siguiente razon: el que solicita un mandamiento de registro tiene que hacerlo por escrito y ese escrito no aparecera en la Mesa del Juez sin que alguien vaya al juez a presentar ese escrito o petición de secuestro. Esa persona que presenta el registro puede ser el mismo denunciante o alguna persona que solicita dicho mandamiento de registro. Ahora toda la enmienda en esos casos consiste en que haya petición de registro y el juez no se atendrá solamente a esa peticion sino que el juez examinará a ese denunciante y si tiene testigos también examinara a los testigos.

"SR. ORENSE. No cree Su Señoría que el tomar la declaracion de ese denunciante por escrito siempre requeriria algun tiempo?

"SR. FRANCISCO. Sería cuestión de un par de horas, pero por otro lado minimizamos en todo lo posible las vejaciones injustas con la expedicion arbitraria de los mandamientos de registro. Creo que entre dos males debemos escoger el menor.

x x x x x x x x x

"MR. LAUREL. x x x The reason why we are in favor of this amendment is because we are incorporating in our constitution something of a fundamental character. Now, before a judge could issue a search warrant, he must be under the obligation to examine personally under oath the complainant and if he has any witness, the witnesses that he may produce. x x x."

The implementing rule in the Revised Rules of Court, Sec. 4, Rule 126, is more emphatic and candid, for it requires the judge, before issuing a search warrant, to "personally examine on oath or affirmation the complainant and any witnesses he may produce x x x."

Personal examination by the judge of the complainant and his witnesses is necessary to enable him to determine the existence or non-existence of a probable cause, pursuant to Art. III, Sec. 1, par. 3, of the Constitution, and Sec. 3, Rule 126 of the Revised Rules of Court, both of which prohibit the issuance of warrants except "upon probable cause." The determination of whether or not a probable cause exists calls for the exercise of judgment after a judicial appraisal of facts and should not be allowed to be delegated in the absence of any rule to the contrary.

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In the case at bar, no personal examination at all was conducted by respondent Judge of the complainant (respondent de Leon) and his witness (respondent Logronio). While it is true that the complainant's application for search warrant and the witness' printed-form deposition were subscribed and sworn to before respondent Judge, the latter did not ask either of the two any question the answer to which could possibly be the basis for determining whether or not there was probable cause against herein petitioners. Indeed, the participants seem to have attached so little significance to the matter that notes of the proceedings before respondent Judge were not even taken. At this juncture it may be well to recall the salient facts. The transcript of stenographic notes (pp. 61-76, April 1, 1970, Annex J-2 of the Petition) taken at the hearing of this case in the court below shows that per instruction of respondent Judge, Mr. Eleodoro V. Gonzales, Special Deputy Clerk of Court, took the depositions of the complainant and his witness, and that stenographic notes thereof were taken by Mrs. Gaspar. At that time respondent Judge was at the sala hearing a case. After respondent Judge was through with the hearing, Deputy Clerk Gonzales, stenographer Gaspar, complainant de Leon and witness Logronio went to respondent Judge's chamber and informed the Judge that they had finished the depositions. Respondent Judge then requested the stenographer to read to him her stenographic notes. Special Deputy Clerk Gonzales testified as follows:

"A And after finishing reading the stenographic notes, the Honorable Judge requested or instructed them, requested Mr. Logronio to raise his hand and warned him if his deposition will be found to be false and without legal basis, he can be charged criminally for perjury. The Honorable Court told Mr. Logronio whether he affirms the facts contained in his deposition and the affidavit executed before Mr. Rodolfo de Leon.

"Q And thereafter?

"A And thereafter, he signed the deposition of Mr. Logronio.

"Q Who is this he?

"A The Honorable Judge.

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"Q The deposition or the affidavit?

"A The affidavit, Your Honor."

Thereafter, respondent Judge signed the search warrant.

The participation of respondent Judge in the proceedings which led to the issuance of Search Warrant No. 2-M-70 was thus limited to listening to the stenographer's reading of her notes, to a few words of warning against the commission of perjury, and to administering the oath to the complainant and his witness. This cannot be considered as a personal examination. If there was an examination at all of the complainant and his witness, it was the one conducted by the Deputy Clerk of Court. But, as already stated, the Constitution and the rules require a personal examination by the Judge. It was precisely on account of the intention of the delegates to the Constitutional Convention to make it a duty of the issuing judge to personally examine the complainant and his witnesses that the question of how much time would be consumed by the judge in examining them came up before the Convention, as can be seen from the record of the proceedings quoted above. The reading of the stenographic notes to respondent Judge did not constitute sufficient compliance with the constitutional mandate and the rule; for by that manner respondent Judge did not have the opportunity to observe the demeanor of the complainant and his witness, and to propound initial and follow-up questions which the judicial mind, on account of its training, was in the best position to conceive. These were important in arriving at a sound inference on the all-important question of whether or not there was probable cause.

2. The search warrant was issued for more than one specific offense.

Search Warrant No. 2-M-70 was issued for "[v]iolation of Sec. 46(a) of the National Internal Revenue Code in relation to all other pertinent provisions thereof particularly Secs. 53, 72, 73, 208 and 209." The question is: Was the said search warrant issued "in connection with one specific offense," as required by Sec. 3, Rule 126?

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To arrive at the correct answer it is essential to examine closely the provisions of the Tax Code referred to above. Thus we find the following:

Sec. 46(a) requires the filing of income tax returns by corporations.

Sec. 53 requires the withholding of income taxes at source.

Sec. 72 imposes surcharges for failure to render income tax returns and for rendering false and fraudulent returns.

Sec. 73 provides the penalty for failure to pay the income tax, to make a return or to supply the information required under the Tax Code.

Sec. 208 penalizes "[a]ny person who distills, rectifies, repacks, compounds, or manufactures any article subject to a specific tax, without having paid the privilege tax therefor, or who aids or abets in the conduct of illicit distilling, rectifying, compounding, or illicit manufacture of any article subject to specific tax x x x," and provides that in the case of a corporation, partnership, or association, the official and/or employee who caused the violation shall be responsible.

Sec. 209 penalizes the failure to make a return of receipts, sales, business, or gross value of output removed, or to pay the tax due thereon.

The search warrant in question was issued for at least four distinct offenses under the Tax Code. The first is the violation of Sec. 46(a), Sec. 72 and Sec. 73 (the filing of income tax returns), which are interrelated. The second is the violation of Sec. 53 (withholding of income taxes at source). The third is the violation of Sec. 208 (unlawful pursuit of business or occupation); and the fourth is the violation of Sec. 209 (failure to make a return of receipts, sales, business or gross value of output actually removed or to pay the tax due thereon). Even in their classification the six above-mentioned provisions are embraced in two different titles: Secs. 46(a), 53, 72 and 73 are under Title II (Income Tax); while Secs. 208 and 209 are under Title V (Privilege Tax on Business and Occupation).

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Respondents argue that Stonehill, et al. *vs.* Diokno, et al., L-19550, June 19, 1967 (20 SCRA 383), is not applicable, because there the search warrants were issued for "violation of Central Bank Laws, Internal Revenue (Code) and Revised Penal Code"; whereas, here Search Warrant No. 2-M-70 was issued for violation of only one code, i.e., the National Internal Revenue Code. The distinction is more apparent than real, because it was precisely on account of the Stonehill incident, which occurred sometime before the present Rules of Court took effect on January 1, 1964, that this Court amended the former rule by inserting therein the phrase "in connection with one specific offense," and adding the sentence "No search warrant shall issue for more than one specific offense," in what is now Sec. 3, Rule 126. Thus we said in *Stonehill:*

"Such is the seriousness of the irregularities committed in connection with the disputed search warrants, that this Court deemed it fit to amend Section 3 of Rule 122 of the former Rules of Court by providing in its counterpart, under the Revised Rules of Court that 'a search warrant shall not issue but upon probable cause *in connection with one specific offense.*' Not satisfied with this qualification, the Court added thereto a paragraph, directing that 'no search warrant shall issue for more than one specific offense,'"

3. The search warrant does not particularly describe the things to be seized.

The documents, papers and effects sought to be seized are described in Search Warrant No. 2-M-70 in this manner:

"Unregistered and private books of accounts (ledgers, journals, columnars, receipts and disbursements books, customers ledgers); receipts for payments received; certificates of stocks and securities; contracts, promissory notes and deeds of sale; telex and coded messages; business communications; accounting and business records; checks and check stubs; records of bank deposits and withdrawals; and records of foreign remittances, covering the years 1966 to 1970."

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The description does not meet the requirement in Art. III, Sec. 1, of the Constitution, and of Sec. 3, Rule 126 of the Revised Rules of Court, that the warrant should particularly describe the things to be seized.

In *Stonehill,* this Court, speaking thru Mr. Chief Justice Roberto Concepcion, said:

"The grave violation of the Constitution made in the application for the contested search warrants was compounded by the description therein made of the effects to be searched for and seized, to wit:

> 'Books of accounts, financial records, vouchers, journals, correspondence, receipts, ledgers, portfolios, credit journals, typewriters, and other documents and/or papers showing all business transactions including disbursement receipts, balance sheets and related profit and loss statements.'

"Thus, the warrants authorized the search for and seizure of records pertaining to *all business transactions* of petitioners herein, regardless of whether the transactions were *legal* or *illegal.* The warrants sanctioned the seizure of *all* records of the petitioners and the aforementioned corporations, whatever their nature, thus openly contravening the explicit command of our Bill of Rights - that the things to be seized be *particularly* described - as well as tending to defeat its major objective: the elimination of general warrants."

While the term "all business transactions" does not appear in Search Warrant No. 2-M-70, the said warrant nevertheless tends to defeat the major objective of the Bill of Rights, i.e., the elimination of general warrants, for the language used therein is so all-embracing as to include all conceivable records of petitioner corporation, which, if seized, could possibly render its business inoperative.

In Uy Kheytin, et al. *vs.* Villareal, etc., et al., 42 Phil., 886, 896, this Court had occasion to explain the purpose of the requirement that the warrant should particularly describe the place to be searched and the things to be seized, to wit:

"x x x Both the Jones Law (Sec. 3) and General Orders No. 58 (Sec. 97) specifically require that a search warrant should *particularly describe* the place to be searched and the things to be seized. The

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evident purpose and intent of this requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant - to leave the officers of the law with no discretion regarding what articles they shall seize, to the end that 'unreasonable searches and seizures' may not be made, - that abuses may not be committed. That this is the correct interpretation of this constitutional provision is borne out by American authorities."

The purpose as thus explained could, surely and effectively, be defeated under the search warrant issued in this case.

A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (People *vs.* Rubio, 57 Phil., 384); or when the description expresses a conclusion of fact - not of law - by which the warrant officer may be guided in making the search and seizure (*idem.*, dissent of Abad Santos, *J.*); or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued (Sec. 2, Rule 126, Revised Rules of Court). The herein search warrant does not conform to any of the foregoing tests. If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence. In this event, the description contained in the herein disputed warrant should have mentioned, at least, the dates, amounts, persons, and other pertinent data regarding the receipts of payments, certificates of stocks and securities, contracts, promissory notes, deeds of sale, messages and communications, checks, bank deposits and withdrawals, records of foreign remittances, among others, enumerated in the warrant.

Respondents contend that certiorari does not lie because petitioners failed to file a motion for reconsideration of respondent Judge's order of July 29, 1970. The contention is without merit. In the first place, when the questions raised before this Court are the same as those which were squarely raised in and passed upon by the court below, the filing of a

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motion for reconsideration in said court before certiorari can be instituted in this Court is no longer a prerequisite. (Pajo, etc., et al. *vs.* Ago, et al., 108 Phil., 905). In the second place, the rule requiring the filing of a motion for reconsideration before an application for a writ of certiorari can be entertained was never intended to be applied without considering the circumstances. (Matutina *vs.* Buslon, et al., 109 Phil., 140) In the case at bar time is of the essence in view of the tax assessments sought to be enforced by respondent officers of the Bureau of Internal Revenue against petitioner corporation, on account of which immediate and more direct action becomes necessary. (Matute *vs.* Court of Appeals, et al., 26 SCRA 768) Lastly, the rule does not apply where, as in this case, the deprivation of petitioners' fundamental right to due process taints the proceeding against them in the court below not only with irregularity but also with nullity. (Matute *vs.* Court of Appeals, et al., *supra*)

It is next contended by respondents that a corporation is not entitled to protection against unreasonable searches and seizures. Again, we find no merit in the contention.

"Although, for the reasons above stated, we are of the opinion that an officer of a corporation which is charged with a violation of a statute of the state of its creation, or of an act of Congress passed in the exercise of its constitutional powers, cannot refuse to produce the books and papers of such corporation, we do not wish to be understood as holding that a corporation is not entitled to immunity, under the 4th Amendment, against *unreasonable* searches and seizures. A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body it waives no constitutional immunities appropriate to such body. Its property cannot be taken without compensation. It can only be proceeded against by due process of law, and is protected, under the 14th Amendment, against unlawful discrimination. x x x ." (Hale *v.* Henkel, 201 U.S. 43, 50 L. ed. 652)

"In Linn *v.* United States, 163 C.C.A. 470, 251 Fed. 476, 480, it was thought that a different rule applied to a corporation, on the ground that it was not privileged from producing its books and papers. But the rights of a corporation against unlawful search and seizure are to

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be protected even if the same result might have been achieved in a lawful way." (Silverthorne Lumber Company, et al. *v.* United States of America, 251 U.S. 385, 64 L. ed. 319)

In Stonehill, et al. *vs.* Diokno, et al., *supra,* this Court impliedly recognized the right of a corporation to object against unreasonable searches and seizures, thus:

"As regards the first group, we hold that petitioners herein have *no* cause of action to assail the legality of the contested warrants and of the seizures made in pursuance thereof, for the simple reason that said corporations have their respective personalities, separate and distinct from the personality of herein petitioners, regardless of the amount of shares of stock or of the interest of each of them in said corporations, and whatever the offices they hold therein may be. *Indeed, it is well settled that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties. Consequently, petitioners herein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to object to the admission of said papers in evidence belongs exclusively to the corporations, to whom the seized effects belong, and may not be invoked by the corporate officers in proceedings against them in their individual capacity.* x x x."

In the *Stonehill* case only the officers of the various corporations in whose offices documents, papers and effects were searched and seized were the petitioners. In the case at bar, the corporation to whom the seized documents belong, and whose rights have thereby been impaired, is itself a petitioner. On that score, petitioner corporation here stands on a different footing from the corporations in *Stonehill.*

The tax assessments referred to earlier in this opinion were, if not entirely - as claimed by petitioners - at least partly - as in effect admitted by respondents - based on the documents seized by virtue of Search Warrant No. 2-M-70. Furthermore, the fact that the assessments were made some one and one-half months after the search and seizure on February 25, 1970, is a strong

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indication that the documents thus seized served as basis for the assessments. Those assessments should therefore not be enforced.

PREMISES CONSIDERED, the petition is granted. Accordingly, Search Warrant No. 2-M-70 issued by respondent Judge is declared null and void; respondents are permanently enjoined from enforcing the said search warrant; the documents, papers and effects seized thereunder are ordered to be returned to petitioners; and respondent officials of the Bureau of Internal Revenue and their representatives are permanently enjoined from enforcing the assessments mentioned in Annex "G" of the present petition, as well as other assessments based on the documents, papers and effects seized under the search warrant herein nullified, and from using the same against petitioners in any criminal or other proceeding. No pronouncement as to costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, and *Makasiar, JJ.,* concur.

*Reyes, J.B.L., J.,*concurs with Justice Barredo.

Ruiz Castro, J., concurs in the result.

Barredo J., concurs in separate opinion.

BARREDO, *J., concurring opinion:*

I agree with the ruling that the search warrants in question violates the specific injunction of Section 3, Rule 126 that "No search warrant shall issue for more than one specific offense." There is no question in my mind that, as very clearly pointed out by Mr. Justice Villamor, the phrase "for violation of Section 46(a) of the National Internal Revenue Code in relation to all other pertinent provisions thereof, particularly Sections 53, 72, 73, 208 and 209" refers to more than one specific offense, considering that the violation of Section 53 which refers to withholding of income taxes at the sources, Section 208 which punishes pursuit of business or occupation without payment of the corresponding specific or privilege taxes, and Section 209 which penalizes failure to make a return of receipts sales, business or gross value output actually removed or to pay the taxes

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thereon in connection with Title V on Privilege Taxes on Business and Occupation can hardly be absorbed in a charge of alleged violation of Section 46(a), which merely requires the filing of income tax returns by corporations, so as to constitute with it a single offense. I perceive here the danger that the result of the search applied for may be used as basis not only for a charge of violating Section 46(a) but also and separately of Sections 53, 208 and 209. Of course, it is to be admitted that Sections 72 and 73, also mentioned in the application, are really directly related to Section 46(a) because Section 72 provides for surcharges for failure to render returns and for rendering false and fraudulent returns and Section 73 refers to the penalty for failure to file returns or to pay the corresponding tax. Taken together, they constitute one single offense penalized under Section 73. I am not and cannot be in favor of any scheme which amounts to an indirect means of achieving that which is not allowed to be done directly. By merely saying that a party is being charged with violation of one section of the code in relation to a number of other sections thereof which in truth have no clear or direct bearing with the first is to me condemnable because it is no less than a shotgun device which trenches on the basic liberties intended to be protected by the unequivocal limitations imposed by the Constitution and the Rules of Court on the privilege to secure a search warrant with the aggravating circumstance of being coupled with an attempt to mislead the judge before whom the application for its issuance is presented.

I cannot close this brief concurrence without expressing my vehement disapproval of the action taken by respondent internal revenue authorities in using the documents and papers secured during the search, the legality of which was pending resolution by the court, as basis of an assessment, no matter how highly motivated such action might have been. This smacks of lack of respect, if not contempt for the court and is certainly intolerable. At the very least, it appears as an attempt to render the court proceedings moot and academic, and dealing as this case does with constitutionally protected rights which are part and parcel of the basic concepts of individual liberty and democracy,

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the government agents should have been the first ones to refrain from trying to make a farce of these court proceedings. Indeed, it is to be regretted that the government agents and the court have acted irregularly, for it is highly doubtful if it would be consistent with the sacredness of the rights herein found to have been violated to permit the filing of another application which complies with the constitutional requirements above discussed and the making of another search upon the return of the papers and documents now in their illegal possession. This could be an instance wherein taxes properly due the State will probably remain unassessed and unpaid only because the ones in charge of the execution of the laws did not know how to respect basic constitutional rights and liberties.