Supreme Court E-Library

jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, *et. seq.* of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.

WHEREFORE, the Petition is granted, and respondent Judge is hereby ordered to dismiss the Complaint filed in Civil Case No. 1075-P of his Court.

Without costs.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., De la Fuente, and *Patajo, JJ.*, concur.

EN BANC

[G.R. No. 69803. October 8, 1985]

CYNTHIA D. NOLASCO, MILA AGUILAR-ROQUE and WILLIE C. TOLENTINO, *petitioners, vs.* **HON. ERNANI CRUZ PANO, Executive Judge, Regional Trial Court of Quezon City; HON. ANTONIO P. SANTOS, Presiding Judge, Branch XLII, Metropolitan Trial Court of Quezon City; HON. SERGIO F. APOSTOL, City Fiscal, Quezon City; HON. JUAN PONCE ENRILE, LT. GEN. FIDEL RAMOS and COL. JESUS ALTUNA,** *respondents.*

Supreme Court E-Library

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; REQUISITES FOR A VALID ISSUANCE OF A SEARCH WARRANT.**— Section 3, Article IV of the Constitution, guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose. It also specifically provides that no Search Warrant shall issue except upon probable cause to be determined by the Judge or such other responsible officer as may be authorized by law, 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.

2. **ID.; ID.; ID.; GENERAL WARRANT IS NULL AND VOID; CASE AT BAR.** —The disputed Search Warrant (No. 80-84) describes the personalities to be seized as follows: "Documents, papers and other records of the Communist Party of the Philippines/ New Peoples Army and/or the National Democratic Front, such as Minutes of the Party Meetings, Plans of these groups, Programs, List of possible supporters, subversive books and instructions, manuals not otherwise available to the public, and support money from foreign or local sources." It is at once evident that the foregoing Search Warrant authorizes the seizure of personal properties vaguely described and not particularized. It is an all-embracing description which includes everything conceivable regarding the Communist Party of the Philippines and the National Democratic Front. It does not specify what the subversive books and instructions are; what the manuals not otherwise available to the public contain to make them subversive or to enable them to be used for the crime of rebellion. There is absent a definite guideline to the searching team as to what items might be lawfully seized thus giving the officers of the law discretion regarding what articles they should seize as, in fact, taken also were a portable typewriter and 2 wooden boxes. It is thus in the nature of a general warrant and infringes on the constitutional mandate requiring particular description of the things to be seized. In the recent rulings of this Court, search warrants of similar description were considered null and void for being too general.

Supreme Court E-Library

3. ID.; ID.; ID.; ID.; PROBABLE CAUSE; MERE GENERALIZATION DOES NOT SATISFY THE REQUIREMENTS OF PROBABLE CAUSE; CASE AT BAR. — The lack of particularization is also evident in the examination of the witness presented by the applicant for Search Warrant. The foregoing questions propounded by respondent Executive Judge to the applicant's witness are not sufficiently searching to establish probable cause. The "probable cause" required to justify the issuance of a search warrant comprehends such facts and circumstances as will induce a cautious man to rely upon them and act in pursuance thereof. Of the 8 questions asked, the 1st, and 2nd and 4th pertain to identity. The 3rd and 5th are leading not searching questions. The 6th, 7th and 8th refer to the description of the personalities to be seized, which is identical to that in the Search Warrant and suffers from the same lack of particularity. The examination conducted was general in nature and merely repetitious of the deposition of said witness. Mere generalization will not suffice and does not satisfy the requirements of probable cause upon which a warrant may issue.

4. ID.; ID.; ID.; SEARCH WARRANT CASE MUST BE CONSOLIDATED WITH THE CRIMINAL CASE.— Parenthetically, it strikes the Court that the pendency of the SEARCH WARRANT case and of the SUBVERSIVE DOCUMENTS CASE before two different Courts is not conducive to an orderly administration of justice. It should be advisable that, whenever a Search Warrant has been issued by one Court, or Branch, and a criminal prosecution is initiated in another Court, or Branch, as a result of the service of the Search Warrant, the SEARCH WARRANT CASE should be consolidated with the criminal case for orderly procedure. The later criminal case is more substantial than the Search Warrant proceeding, and the Presiding Judge in the criminal case should have the right to act on petitions to exclude evidence unlawfully obtained.

5. ID.; ID.; ID.; ARTICLES SEIZED UNDER AN INVALID SEARCH WARRANT MAY NOT BE RETURNED IN THIS INSTANCE; AS AN INCIDENT OF AN ARREST THE PLACE OR PREMISES WHERE ARREST WAS MADE BE SEARCHED WITHOUT SEARCH WARRANT.— Notwithstanding the irregular issuance of the Search Warrant and although, ordinarily, the articles seized under an invalid search warrant

Supreme Court E-Library

should be returned. they cannot be ordered returned in the case at bar to AGUILAR-ROQUE. Some searches may be made without a warrant. Thus, Section 12, Rule 126, Rules of Court, explicitly provides: "Section 12. Search without warrant of person arrested. — A person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense." The provision is declaratory in the sense that it is confined to the search, without a search warrant, of a person who had been arrested. It is also a general rule that, as an incident of an arrest, the place or premises where the arrest was made can also be searched without a search warrant. In this latter case, "the extent and reasonableness of the search must be decided on its own facts and circumstances, and it has been stated that, in the application of general rules, there is some confusion in the decisions as to what constitutes the extent of the place or premises which may be searched." 79 C.J.S. p. 843 "What must be considered is the balancing of the individual's right to privacy and the public's interest in the prevention of crime and the apprehension of criminals."

TEEHANKEE, *J., concurring and dissenting:*

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURE; ALL EVIDENCE OBTAINED IN VIOLATION OF RIGHT FALL UNDER THE EXCLUSIONARY RULE, TOTALLY AND UNQUALIFIEDLY. — The Bill of Rights orders the absolute exclusion of all illegally obtained evidence: "Any evidence obtained in violation of this . . . section shall be inadmissible for any purpose in any proceeding" (Sec. 4[2]). This constitutional mandate expressly adopting the exclusionary rule has proved by historical experience to be the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures by *outlawing* all evidence illegally seized and thereby removing the incentive on the part of state and police officers to disregard such basic rights. What the plain language of the Constitution mandates is beyond the power of the courts to change or modify. All the articles thus seized fall under the exclusionary rule *totally* and *unqualifiedly* and cannot be used against any of the three petitioners, as held by the majority in the recent case of *Galman vs. Pamaran*

Supreme Court E-Library

(G.R. Nos. 71208-09, August 30, 1985). The Court has held that "in issuing a search warrant the judge must strictly comply with the requirements of the Constitution and the statutory provisions. A liberal construction should be given in favor of the individual to prevent stealthy encroachment upon, or gradual depreciation of the rights secured by the Constitution. No presumptions of regularity are to be invoked in aid of the process when an officer undertakes to justify it."

2. ID.; ID.; ID.; REQUISITES OF WARRANTLESS SEARCH. — The exception of Rule 126, Sec. 12 which allows a warrantless search of a person who is lawfully arrested is absolutely limited to his *person, at the time of and incident to his arrest and to "dangerous weapons or anything which may be used as proof of the commission of the offense."* Such warrantless search obviously cannot be made in a place *other* than the place of arrest. In this case, petitioner Aguilar-Roque was arrested at 11:30 a.m. on board a public vehicle *on the road* (at Mayon and P. Margall Streets). To hold that her dwelling could "later on the same day" be searched without warrant is to sanction an untenable violation, if not nullification, of the cited basic constitutional rights against unreasonable searches and seizures.

ABAD SANTOS, *J.*, *concurring and dissenting:*

CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; WHETHER A MATERIAL IS SUBVERSIVE OR NOT IS A CONCLUSION OF LAW; ALL ARTICLES SEIZED MUST BE RETURNED. — I do not agree with the *ponencia* when it says that personalities seized may be retained by the Constabulary Security Group for possible introduction as evidence in Criminal Case No. SMC-1-1 pending before Special Military Commission No. 1. I agree with Justice Cuevas, for the reasons stated by him, that their retention cannot be justified by the provisions of Sec. 12, Rule 126 of the Rules of Court. But then again I cannot agree with Justice Cuevas' statement that not all the things seized can be ordered returned to their owners. He refers to "the subversive materials seized by the government agents."

Supreme Court E-Library

What are subversive materials? Whether a material is subversive or not is a conclusion of law, not of fact. Who will make the determination? Certainly not the military for it is not competent to do so aside from the fact that it has its own peculiar views on the matter. Thus copies of Playboy magazines were seized from a labor leader now deceased and medicines were also seized from a physician who was suspected of being a subversive. I say return everything to the petitioners.

CUEVAS, *J., concurring and dissenting:*

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURE; WARRANTLESS SEARCH MUST BE LIMITED TO AND CIRCUMSCRIBED BY THE SUBJECT, TIME AND PLACE OF ARREST. — The lawful arrest being the sole justification for the validity of the warrantless search under the aforequoted provision (Sec. 12, Rule 126) the same must be limited to and circumscribed by, the *subject*, *time*, and *place* of said arrest. As to *subject*, the warrantless search is sanctioned only with respect to the person of the suspect, and things that may be seized from him are limited to "dangerous weapons" or "anything which may be used as proof of the commission of the offense." With respect to the *time* and *place* of the warrantless search allowed by the law, it must be contemporaneous with the lawful arrest. Stated otherwise, to be valid, the search must have been conducted at about the time of the arrest or immediately thereafter and only at the place where the suspect was arrested.

2. ID.; ID.; ID.; WARRANTLESS SEARCH MUST BE INCIDENT TO THE ARREST; CASE AT BAR.— The second element which must exist in order to bring the case within the exception to the general rule is that, in addition to a lawful arrest, *the search must be incident to the arrest.*

3. ID.; ID.; ID.; OBJECTS AND PROPERTIES THE POSSESSION OF WHICH IS PROHIBITED BY LAW CANNOT BE RETURNED TO THE OWNERS.— What appears undisputed is that the *search was made in a place other than the place of arrest and, not on the occasion of nor immediately after the arrest.* It cannot be said, therefore, that such a search was

Supreme Court E-Library

incidental to the arrest of the petitioners. Not being an incident of a lawful arrest, the search of the premises at 239B Mayon St., Quezon City WITHOUT A VALID SEARCH WARRANT is ILLEGAL and violative of the constitutional rights of the petitioners. The things and properties seized on the occasion of said illegal search are therefore INADMISSIBLE in evidence under the exclusionary rule.

APPEARANCES OF COUNSEL

Jose W. Diokno, Joker P. Arroyo, Rene A.V. Sarmiento, Dan Malabonga and *Cesar Maravilla* for petitioners.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

The facts before the Court in these *Certiorari*, Prohibition, and *Mandamus* proceedings will be briefly stated. The three petitioners will be referred to through their surnames of NOLASCO, AGUILAR-ROQUE and TOLENTINO.

1. Prior to August 6, 1984 (hereinafter to be referred to without the year), AGUILAR-ROQUE was one of the accused of *Rebellion* in Criminal Case No. SMC-1-1 before Special Military Commission No. 1, and also one of the accused of *Subversion* in Criminal Case No. MC-25-113 of Military Commission No. 25, both cases being entitled "*People of the Philippines vs. Jose Ma. Sison, et al.*" She was then still at large.

2. At 11:30 A.M. on August 6th, AGUILAR-ROQUE and NOLASCO were arrested by a Constabulary Security Group (CSG) at the intersection of Mayon Street and P. Margall Street, Quezon City. The stated time is an allegation of petitioners, not denied by respondents. The record does not disclose that a warrant of arrest had previously been issued against NOLASCO.

3. At 12:00 N.N. on August 6th, elements of the CSG searched the premises at 239-B Mayon Street, Quezon City.

Supreme Court E-Library

The stated time is an allegation of petitioners, not specifically denied by respondents. In their COMMENT, however, respondents have alleged that the search was conducted "late on the same day"; that is late on August 6th.

4. On August 6th, at around 9:00 A.M., Lt. Col. Virgilio G. Saldajeno of the CSG, applied for a Search Warrant from respondent Hon. Ernani Cruz Paño, Executive Judge of the Regional Trial Court in Quezon City, to be served at No. 239-B Mayon Street, Quezon City, determined to be the leased residence of AGUILAR-ROQUE, after almost a month of "round the clock surveillance" of the premises as a "suspected underground house of the CPP/NPA." AGUILAR-ROQUE has been long wanted by the military for being a high ranking officer of the Communist Party of the Philippines, particularly connected with the MV Karagatan/Doña Andrea cases.

In connection with the Search Warrant issued, the following may be stated:

(a) The Search Warrant was issued in proceedings entitled "*People of the Philippines vs. Mila Aguilar-Roque*, Accused, Search Warrant No. 80-84 for *Rebellion*" (the SEARCH WARRANT CASE). Judge Paño's Court was Branch 88.

(b) It does not appear from the records before us that an application in writing was submitted by Lt. Col. Saldajeno to Judge Paño.

(c) According to the record, Lt. Col. Saldajeno and his witness S/A Dionicio A. Lapus, were examined under oath by Judge Paño, but only the deposition of S/A Lapus has been submitted to us. The latter deposed that to his personal knowledge, there were kept in the premises to be searched records, documents and other papers of the CPP/NPA and the National Democratic Front, including support money from foreign and local sources intended to be used for rebellion.[1]

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[1] *Rollo*, pp. 24 & 145.

Supreme Court E-Library

5. In connection with the search made at 12:00 N.N. of August 6th, the following may be stated:

(a) TOLENTINO was a person then in charge of the premises. He was arrested by the searching party presumably without a warrant of arrest.

(b) The searching party seized 428 documents and written materials,[2] and additionally a portable typewriter, and 2 wooden boxes, making 431 items in all.[3]

(c) According to the Return, submitted in the SEARCH WARRANT CASE on August 10th,[4] the search was made in the presence of Dra. Marciana Galang, owner of the premises, and of two (2) Barangay Tanods. No mention was made that TOLENTINO was present. The list of the 428 articles and documents attached to the Return was signed by the two Barangay Tanods, but not by Dra. Galang.

6. (a) On August 10th, the three petitioners, AGUILAR-ROQUE, NOLASCO and TOLENTINO, were charged before the Quezon City Fiscal's Office (the CITY FISCAL, for short) upon complaint filed by the CSG against petitioners for "Subversion/Rebellion and/or Conspiracy to Commit Rebellion/ Subversion.

"(b) On August 13th, the CITY FISCAL filed an Information for Violation of Presidential Decree No. 33 (Illegal Possession of Subversive Documents) against petitioners before Branch 42 of the Metropolitan Trial Court of Quezon City (the SUBVERSIVE DOCUMENTS CASE), respondent Judge Antonio P. Santos, presiding.

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[2] Inventory List dated August 6, 1984, Annex "D-1", Petition, p. 41, *Rollo*.

[3] Amended Inventory List, dated August 31, 1984, Annex "G", *ibid.*, p. 46, *Rollo*.

[4] Annex "D", Petition.

Supreme Court E-Library

(c) On August 16th, CSG filed a Motion for Reconsideration with the CITY FISCAL, praying that AGUILAR-ROQUE and NOLASCO be charged with Subversion. The Motion was denied on November 16th.

7. (a) On September 10th, the CSG submitted an Amended Return in the SEARCH WARRANT CASE praying, *inter alia*, that the CSG be allowed to retain the seized 431 documents and articles, "in connection with cases that are presently pending against Mila Aguilar Roque before the Quezon City Fiscal's Office and the court."[5]

(b) On September 28th, petitioners were required by Judge Paño to comment on the Amended Return, which AGUILAR-ROQUE did on October 18th, raising the issue of the inadmissibility of any evidence obtained pursuant to the Search Warrant.

(c) On December 13, 1984, Judge Paño admitted the Amended Return and ruled that the seized documents "shall be subject to disposition of the tribunal trying the case against respondent."

8. (a) On December 12th, petitioners filed a Motion to Suppress in the SUBVERSIVE DOCUMENTS CASE, praying that such of the 431 items belonging to them be returned to them. It was claimed that the proceedings under the Search Warrant were unlawful. Judge Santos denied the Motion on January 7, 1985 on the ground that the validity of the Search Warrant has to be litigated in the SEARCH WARRANT CASE. He was apparently not aware of the Order of Judge Paño of December 13th issued in the SEARCH WARRANT CASE.

Hence, this Petition for *Certiorari*, Prohibition and *Mandamus* to annul and set aside the (1) Search Warrant issued by respondent RTC Judge Paño; (2) his Order admitting the Amended Return and granting the Motion to Retain Seized Items; and (3) Order of respondent MTC Judge Santos denying petitioners' Motion to Suppress.

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[5] Annex "F", Petition, p. 44, *Rollo*.

Supreme Court E-Library

This Court, on February 12, 1985, issued a Temporary Restraining Order enjoining the respondents or their duly authorized representatives from introducing evidence obtained under the Search Warrant.

The PETITIONERS principally assert that the Search Warrant is void because it is a general warrant since it does not sufficiently describe with particularity the things subject of the search and seizure, and that probable cause has not been properly established for lack of searching questions propounded to the applicant's witness. The respondents, represented by the Solicitor General, contend otherwise, adding that the questions raised cannot be entertained in this present petition without petitioners first moving for the quashal of the disputed Search Warrant with the issuing Judge.

We find merit in the Petition.

Section 3, Article IV of the Constitution, guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose. It also specifically provides that no Search Warrant shall issue except upon probable cause to be determined by the Judge or such other responsible officer as may be authorized by law, 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.

The disputed Search Warrant (No. 80-84) describes the personalities to be seized as follows:

"Documents, papers and other records of the Communist Party of the Philippines/New Peoples Army and/or the National Democratic Front, such as Minutes of the Party Meetings, Plans of these groups, Programs, List of possible supporters, subversive books and instructions, manuals not otherwise available to the public, and support money from foreign or local sources."

It is at once evident that the foregoing Search Warrant authorizes the seizure of personal properties vaguely described

Supreme Court E-Library

and not particularized. It is an all-embracing description which includes everything conceivable regarding the Communist Party of the Philippines and the National Democratic Front. It does not specify what the subversive books and instructions are; what the manuals not otherwise available to the public contain to make them subversive or to enable them to be used for the crime of rebellion. There is absent a definite guideline to the searching team as to what items might be lawfully seized thus giving the officers of the law discretion regarding what articles they should seize as, in fact, taken also were a portable typewriter and 2 wooden boxes. It is thus in the nature of a general warrant and infringes on the constitutional mandate requiring particular description of the things to be seized. In the recent rulings of this Court, search warrants of similar description were considered null and void for being too general. Thus:

"Subversive documents, pamphlets, leaflets, books, and other publications to promote the objectives and purposes of the subversive organizations known as Movement for Free Philippines, Light-a-Fire Movement and April 6 Movement."[6]

"The things to be seized under the warrant issued by respondent judge were described as 'subversive documents, propaganda materials, FAs, printing paraphernalia and all other subversive materials.' Such description hardly provided a definite guideline to the search team as to what articles might be lawfully seized thereunder. Said description is no different from if not worse than, the description found in the search warrants in '*Burgos, et al. v. the Chief of Staff*' which this Court declared null and void for being too general."[7]

"In the case at bar, the search warrant issued by respondent judge allowed the seizure of printed copies of the Philippine Times, manuscripts/drafts of articles for publication, newspaper dummies, subversive documents, articles, *etc.*, and even typewriters, duplicating machines, mimeographing and tape recording machines. Thus, the language used is so all embracing as to include all conceivable records and equipment of petitioner regardless of whether they are legal or

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[6] *Burgos, Sr. vs. Chief of Staff*, AFP, 133 SCRA 800, 814 & 815 (1984).

[7] *Fr. Jose Dizon vs. Hon. Jose P. Castro*, Resolution of April 11, 1985 in G.R. No. 67923, p. 4.

Supreme Court E-Library

illegal. The search warrant under consideration was in the nature of a general warrant which is constitutionally objectionable."[8]

The lack of particularization is also evident in the examination of the witness presented by the applicant for Search Warrant.

"Q Mr. Dionicio Lapus, there is an application for search warrant filed by Lt. Col. Virgilio Saldajeno, and the Court would like to know if you affirm the truth of your answer in this deposition?

(The deposition is read) —

A Yes, sir.

Q How long did it take you for the surveillance?

A Almost a month, sir.

Q Are you a lawyer, Mr. Lapus?

A No, Your Honor, but I was a student of law.

Q So, you are more or less familiar with the requisites of the application for search warrant?

A Yes, Your Honor.

Q How did you come to know of the person of Mila Aguilar-Roque?

A Because of our day and night surveillance, Your Honor, there were so many suspicious persons with documents.

Q What kind of documents do you refer to?

A Documents related to the Communist Party of Philippines and New People's Army.

Q What else?

A Conferences of the top ranking officials from the National Democratic Front, Organization of the Communist Party of the Philippines . . .

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[8] *Rommel Corro vs. Hon. Esteban Lising*, G.R. No. 69899, July 15, 1985, p. 8.

Supreme Court E-Library

Q And may include what else?

A Other papers and documents like Minutes of the Party Meetings, Plans of these groups, Programs, List of possible supporters, subversive books and instructions, manuals not otherwise available to the public and support money from foreign and local sources."[9]

The foregoing questions propounded by respondent Executive Judge to the applicant's witness are not sufficiently searching to establish probable cause. The "probable cause" required to justify the issuance of a search warrant comprehends such facts and circumstances as will induce a cautious man to rely upon them and act in pursuant thereof.[10] Of the 8 questions asked, the 1st, 2nd and 4th pertain to identity. The 3rd and 5th are leading not searching questions. The 6th, 7th and 8th refer to the description of the personalities to be seized, which is identical to that in the Search Warrant and suffers from the same lack of particularity. The examination conducted was general in nature and merely repetitious of the deposition of said witness. Mere generalization will not suffice and does not satisfy the requirements of probable cause upon which a warrant may issue.[11]

Respondents claim, however, that the proper forum for questioning the illegality of a Search Warrant is with the Court that issued it instead of this original, independent action to quash. The records show, however, that petitioners did raise that issue in the SEARCH WARRANT CASE in their Comment, dated October 18, 1984. In fact, they already questioned the admissibility of the evidence obtained under the Search Warrant, even during the inquest investigation on August 10, 1984. And in the SUBVERSIVE DOCUMENTS CASE, they filed a Motion to Suppress on December 12, 1984 claiming that the proceedings under the Search Warrant were unlawful. Substantially, therefore,

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[9] *Rollo*, pp. 144 & 145.

[10] *U.S. vs. Addison*, 28 Phil. 566, 570 (1914); *People vs. Sy Juco*, 64 Phil. 667 (1937).

[11] *Burgos, Sr. vs. Chief of Staff, AFP*, 133 SCRA 800 (1984).

Supreme Court E-Library

while not denominated as a motion to quash, petitioners had questioned the legality of the Search Warrant.

Parenthetically, it strikes the Court that the pendency of the SEARCH WARRANT CASE and of the SUBVERSIVE DOCUMENTS CASE before two different Courts is not conducive to an orderly administration of justice. It should be advisable that, whenever a Search Warrant has been issued by one Court, or Branch, and a criminal prosecution is initiated in another Court, or Branch, as a result of the service of the Search Warrant, the SEARCH WARRANT CASE should be consolidated with the criminal case for orderly procedure. The later criminal case is more substantial than the Search Warrant proceeding, and the Presiding Judge in the criminal case should have the right to act on petitions to exclude evidence unlawfully obtained.

Notwithstanding the irregular issuance of the Search Warrant and although, ordinarily, the articles seized under an invalid search warrant should be returned, they cannot be ordered returned in the case at bar to AGUILAR-ROQUE. Some searches may be made without a warrant. Thus, Section 12, Rule 126, Rules of Court, explicitly provides:

"Section 12. Search without warrant of person arrested. — A person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense."

The provision is declaratory in the sense that it is confined to the search, without a search warrant, of a person who had been arrested. It is also a general rule that, as an incident of an arrest, the place or premises where the arrest was made can also be searched without a search warrant. In this latter case, "the extent and reasonableness of the search must be decided on its own facts and circumstances, and it has been stated that, in the application of general rules, there is some confusion in the decisions as to what constitutes the extent of the place or premises which may be searched."[12] "What must

[12] 79 C.J.S., p. 843.

Supreme Court E-Library

be considered is the balancing of the individual's right to privacy and the public's interest in the prevention of crime and the apprehension of criminals."[13]

Considering that AGUILAR-ROQUE has been charged with Rebellion, which is a crime against public order; that the warrant for her arrest has not been served for a considerable period of time; that she was arrested within the general vicinity of her dwelling; and that the search of her dwelling was made within a half hour of her arrest, we are of the opinion that, in her respect, the search at No. 239-B Mayon Street, Quezon City, did not need a search warrant; this, for possible effective results in the interest of public order.

Such being the case, the personalities seized may be retained by CSG, for possible introduction as evidence in the Rebellion Case, leaving it to AGUILAR-ROQUE to object to their relevance and to ask Special Military Commission No. 1 to return to her any all irrelevant documents and articles.

WHEREFORE, while Search Warrant No. 80-84 issued on August 6, 1984 by respondent Executive Judge Ernani Cruz Paño is hereby annulled and set aside, and the Temporary Restraining Order enjoining respondents from introducing evidence obtained pursuant to the Search Warrant in the Subversive Documents Case hereby made permanent, the personalities seized may be retained by the Constabulary Security Group for possible introduction as evidence in Criminal Case No. SMC-1-l, pending before Special Military Commission No. 1, without prejudice to petitioner Mila Aguilar-Roque objecting to their relevance and asking said Commission to return to her any and all irrelevant documents and articles.

SO ORDERED.

Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Alampay, and *Patajo, JJ.*, concur.

Makasiar, C.J., concurs in the result.

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[13] 68 Am Jur 2d. p. 746.

Supreme Court E-Library

Teehankee, J., files a separate concurring and dissenting opinion.

Aquino, J., took no part.

Concepcion Jr., J., reserves his vote.

Abad Santos, J., see concurring and dissenting opinion.

Cuevas, J., with separate and dissenting opinion.

TEEHANKEE, J., *concurring and dissenting:*

I concur with the concurring and dissenting opinion of Mr. Justice Vicente Abad Santos. The questioned search warrant has correctly been declared null and void in the Court's decision as a general warrant issued in gross violation of the constitutional mandate that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated" (Bill of Rights, Sec. 3). The Bill of Rights orders the absolute exclusion of all illegally obtained evidence: "Any evidence obtained in violation of this . . . section shall be inadmissible for any purpose in any proceeding" (Sec. 4[2]). This constitutional mandate expressly adopting the exclusionary rule has proved by historical experience to be the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures by *outlawing* all evidence illegally seized and thereby removing the incentive on the part of state and police officers to disregard such basic rights. What the plain language of the Constitution mandates is beyond the power of the courts to change or modify.

All the articles thus seized fall under the exclusionary rule *totally* and *unqualifiedly* and cannot be used against any of the three petitioners, as held by the majority in the recent case of *Galman vs. Pamaran* (G.R. Nos. 71208-09, August 30, 1985). The Court has held that "in issuing a search warrant the judge must strictly comply with the requirements of the Constitution and the statutory provisions. A liberal construction should be

Supreme Court E-Library

given in favor of the individual to prevent stealthy encroachment upon, or gradual depreciation of the rights secured by the Constitution. No presumptions of regularity are to be invoked in aid of the process when an officer undertakes to justify it." (*Mata vs. Bayona*, 128 SCRA 388, 393-394)

The majority pronouncement that "as an incident to (petitioner Mila Aguilar-Roque's) arrest, her dwelling at No. 239-B Mayon Street, Quezon City could have been searched, even without a warrant, for evidence of rebellion" is patently against the constitutional proscription and settled law and jurisprudence. Mr. Justice Cuevas amply discusses this in the dissenting portion of his separate opinion. Suffice it to add and stress that the arresting CSG Group themselves knew that they needed a search warrant and obtained the void warrant in question. The exception of Rule 126, Sec. 12 which allows a warrantless search of a person who is lawfully arrested is absolutely limited to his *person, at the time of and incident to his arrest and to "dangerous weapons or anything which may be used as proof of the commission of the offense*." Such warrantless search obviously cannot be made in a place *other* than the place of arrest. In this case, petitioner Aguilar-Roque was arrested at 11:30 a.m. on board a public vehicle *on the road* (at Mayon and P. Margall Streets). To hold that her dwelling could "later on the same day" be searched without warrant is to sanction an untenable violation, if not nullification, of the cited basic constitutional rights against unreasonable searches and seizures.

I vote to grant the petition *in toto*.

ABAD SANTOS, *J., concurring and dissenting:*

I concur in the judgment insofar as it annuls and sets aside Search Warrant No. 80-84 issued by Executive Judge Ernani Cruz Paño for the reasons adduced by Justice Melencio-Herrera. In addition I wish to state the judge either did not fully know the legal and constitutional requirements for the issuance of a search warrant or he allowed himself to be used by the military. In either case his action can only be described as deplorable.

Supreme Court E-Library

I do not agree with the *ponencia* when it says that personalities seized may be retained by the Constabulary Security Group for possible introduction as evidence in Criminal Case No. SMC-1-1 pending before Special Military Commission No. 1. I agree with Justice Cuevas, for the reasons stated by him, that their retention cannot be justified by the provisions of Sec. 12, Rule 126 of the Rules of Court. But then again I cannot agree with Justice Cuevas' statement that not all the things seized can be ordered returned to their owners. He refers to "the subversive materials seized by the government agents." What are subversive materials? Whether a material is subversive or not is a conclusion of law, not of fact. Who will make the determination? Certainly not the military for it is not competent to do so aside from the fact that it has its own peculiar views on the matter. Thus copies of Playboy magazines were seized from a labor leader now deceased and medicines were also seized from a physician who was suspected of being a subversive. I say return everything to the petitioners.

CUEVAS, *J.*, *concurring and dissenting:*

I fully agree with the pronouncement in the majority opinion nullifying Search Warrant No. 80-84 issued by the Hon. Ernani Cruz Paño, Executive Judge of the Regional Trial Court of Quezon City which was served at 239-B Mayon St., Quezon City. It does not specify with requisite particularity the things, objects or properties that may be seized thereunder. Being in the nature of a general warrant, it violates the constitutional mandate that the place to be searched and the persons or things to be seized, must be particularly described. (Art. IV, Sec. 3, 1973 Constitution).

I, however, regret being unable to concur with the dictum justifying the said search on the basis of Sec. 12, Rule 126 of the Rules of Court which provides:

"SEC. 12. Search without warrant of person arrested. — A person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense."

Supreme Court E-Library

The lawful arrest being the sole justification for the validity of the warrantless search under the aforequoted provision (Sec. 12, Rule 126) the same must be limited to and circumscribed by, the *subject*, *time*, and *place* of said arrest. As to *subject*, the warrantless search is sanctioned only with respect to the person of the suspect, and things that may be seized from him are limited to "dangerous weapons" or "anything which may be used as proof of the commission of the offense." Hence —

"An officer making an arrest may take from the person arrested any money or property found upon his person which was used in the commission of the crime or might furnish the prisoner with the means of committing violence or escaping or which may be used as evidence in the trial of the cause x x x" (In Re *Moreno vs. Ago Chi*, 12 Phil. 439: *People vs. Veloso*, 48 Phil. 169).

With respect to the *time* and *place* of the warrantless search allowed by law, it must be contemporaneous with the lawful arrest. Stated otherwise, to be valid, the search must have been conducted at about the time of the arrest or immediately thereafter and only at the place where the suspect was arrested.

"The right without a search warrant contemporaneously to search a person lawfully arrested *while committing a crime* and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons or other things to effect an escape from custody is not to be doubted. CAROLL vs. U.S. 267 US 122, 158. x x x *But the right does not extend to other places*. Frank Agnello's house was several blocks distant from Alba's house where the arrest was made. When it was entered and searched, the conspiracy was ended and the defendants were under arrest and in custody elsewhere. That search cannot be sustained as an incident of the arrests. *MARSON vs. US*, 275 US 192, 199." (Italics supplied) (*Agnello vs. U.S.*, 269 U.S. 20, 30).

The second element which must exist in order to bring the case within the exception to the general rule is that, in addition to a lawful arrest, *the search must be incident to the arrest*.

"The search must be made at the place of the arrest, otherwise, it is not incident to the arrest. *AGNELLO vs. U.S., supra*. In this latter

Supreme Court E-Library

case, 269 U.S. 20 at 30, it is said that the officers have a right to make a search contemporaneously with the arrest. *And if the purpose of the officers in making their entry is not to make an arrest*, but to make a search to obtain evidence for some future arrest, then search is not incidental to arrest. *BYARS vs. U.S.* 273 U.S., 28 *ET AL.*" (*Papani vs. U.S.*, 84 F 2d 160, 163)

In the instant case, petitioners were arrested at the intersection of Mayon St. and P. Margall St. at 11:30 A.M. of August 6, 1976. The search, on the other hand, was conducted after the arrest, that was at around 12:00 noon of the same day or "late that same day (as respondents claim in their "COMMENT") at the residence of petitioner AGUILAR-ROQUE in 239-B Mayon St., Quezon City. How far or how many kilometers is that place from the place where petitioner was arrested do not appear shown by the record. But what appears undisputed is that the *search was made in a place other than the place of arrest and, not on the occasiòn of nor immediately after the arrest*. It cannot be said, therefore, that such a search was incidental to the arrest of the petitioners. Not being an incident of a lawful arrest, the search of the premises at 239-B Mayon St., Quezon City WITHOUT A VALID SEARCH WARRANT is ILLEGAL and violative of the constitutional rights of the *petitioners*. The things and properties seized on the occasion of said illegal search are therefore INADMISSIBLE in evidence under the exclusionary rule. However, not all the things so seized can be ordered returned to their owners. Objects and properties the possession of which is prohibited by law, cannot be returned to their owners notwithstanding the illegality of their seizure. (*Mata vs. Bayona*, 128 SCRA 388 [1984] citing *Castro vs. Pabalan*, 70 SCRA 478). Thus, the subversive materials seized by the government agents which cannot be legally possessed by anyone under the law can and must be retained by the government.