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WHEREFORE, THE ORDERS DATED MAY 10, 1976, JUNE 9, 1976 AND JULY 21, 1976 ARE HEREBY SET ASIDE AND THE RESPONDENT COURT OF APPEALS IS HEREBY DIRECTED TO DECIDE THE APPEAL ON THE MERITS. NO COSTS.

SO ORDERED.

Teehankee (Chairman), Muñoz Palma, Concepcion, Jr., and *Martin, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-44910. November 29, 1976]

IN THE MATTER OF THE APPLICATION FOR *HABEAS CORPUS* OF SERAFIN G. CRUZ. SERAFIN G. CRUZ, *petitioner, vs.* **GEN. ROMEO GATAN of the Philippine Constabulary (PC) Camp Olivas, San Fernando, Pampanga,** *respondent.*

SYLLABUS

CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; POWERS AND PREROGATIVES UNDER GENERAL ORDER NO. 2-A; CASE AT BAR.— Under General Order No. 2-A, as amended, the President of the Philippines, pursuant to Proclamation No. 1081, dated September 21, 1972, ordered the Secretary of National Defense "to arrest or cause the arrest and take into custody and to hold them until otherwise ordered released by me or by my duly designated representative: 1. Such persons as may have committed crimes and offenses in furtherance or on the occasion of or incident to or in connection with the crimes of insurrection or rebellion as defined in Article 134 to 138 of the Revised Penal Code, and other crimes against public order as defined in Articles 146, 147, 148, 151,

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153, 154, 155 and 156 of the same Code; x x x." The petitioner in the instant case was arrested and detained by virtue of an Arrest, Search, and Seizure Order issued by the Secretary of National Defense for violation of Article 147 of the Revised Penal Code pursuant to the aforequoted General Order No. 2-A, as amended; hence, his arrest and continued detention is legal.

RESOLUTION

CONCEPCION, JR., *J.*:

Serafin G. Cruz was arrested by PC agents on August 30, 1976, at the Baguio Checkpoint along Kennon Road, Baguio City, and brought to Camp Olivas, San Fernando, Pampanga, under the command of respondent Gen. Romeo Gatan, for custodial interrogation, where he is presently detained.

On October 22, 1976, a petition for the issuance of a writ of habeas corpus was filed in his behalf wherein it was claimed that the said Serafin Cruz is held incommunicado; that he is restrained of his liberty without due process of law and is in the custody of the respondent not by virtue of a judgment or court order; that he is not a member of any subversive organization covered by Proclamation No. 1081 and falls within the clays of persons to whom the privilege of the writ of habeas corpus has not been suspended.[1]

The Court issued the writ of habeas corpus returnable to the Court on Friday, November 12, 1976 at 3:00 p.m. and required the respondent to make a return of the writ not later than Wednesday, November 10, 1976.[2]

Admitting that the petitioner has been arrested and detained, the respondent justifies such arrest and detention as having been legally ordered by the President of the Philippines in the exercise of his powers under martial law claiming that Serafin G. Cruz was arrested by virtue of Arrest, Search, and Seizure

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[1] p. 1, *rollo*.

[2] p. 5, *Ibid*.

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Order No. 4122, dated August 28, 1976, issued by the Secretary of National Defense, for violation of Art. 147 of the Revised Penal Code (Illegal Associations), Serafin G. Cruz being the "Over-all Commander and Contractor General of the Bataan Defenders Command," an unregistered veterans outfit, at the time of his arrest. It is further claimed that his continued detention is the free will and volition of the petitioner who expressed fears that he might be harmed or injured by some members of the "Bataan Defenders Command" if he were free from custody while the mastermind and legal counsel of the association, one Atty. Cecilio Baylon Buenafe, has not yet been arrested.[3]

On November 17, 1976, counsel, who filed the petition in behalf of Serafin G. Cruz, filed a comment on the return saying, among others, that after November 12, 1976, he talked with Serafin G. Cruz and the latter avowed his preference to stay within the confines of Camp Olivas, notwithstanding the subsequent arrest of the said Atty. Cecilio Baylon Buenafe, thus rendering the issues raised in the petition unnecessary and/or irrelevant.[4] Then, at the hearing of the case, Serafin G. Cruz manifested to the Court that he prefers to stay under protective custody. Under the circumstances, there is no other recourse but to dismiss the case.

But, be that as it may, under General Order No. 2-A, as amended, the President of the Philippines, pursuant to Proclamation No. 1081, dated September 21, 1972, ordered the Secretary of National Defense "to arrest or cause the arrest and take into custody and to hold them until otherwise ordered released by me or by my duly designated representative: 1. Such persons as may have committed crimes and offenses in furtherance or on the occasion of or incident to or in connection with the crimes of insurrection or rebellion as defined in Articles 134 to 138 of the Revised Penal Code, and other crimes against public order as defined in Articles 146, 147, 148, 149, 151, 153, 154, 155, and 156 of the same Code; x x x."

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[3] p. 15, *Ibid.*

[4] p. 34, *Ibid.*

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The petitioner in the instant case was arrested and detained by virtue of an Arrest, Search, and Seizure Order issued by the Secretary of National Defense for violation of Article 147 of the Revised Penal Code pursuant to the aforequoted General Order No. 2-A, as amended; hence, his arrest and continued detention is legal. The declaration of martial law and the consequent suspension of the privilege of the writ of habeas corpus with respect to persons reasonably believed or charged to be engaged in the disorder or in fomenting it having been settled in the case of *Aquino, Jr. vs. Ponce Enrile etc., et al.*,[5] any inquiry by this Court into the continued detention of the petitioner would be purposeless.

WHEREFORE, the instant case should be, as it is hereby DISMISSED. No costs.

Barredo, Antonio and *Aquino, JJ.*, concur.

Fernando (Chairman), J., concurs in the result.

SECOND DIVISION

[G.R. No. L-44989. November 29, 1976]

IN THE MATTER OF THE PETITION FOR THE ISSUANCE OF WRIT OF *HABEAS CORPUS* OF JOVITO M. GO, AMELIA S. GO, *petitioner, vs.* **GENERAL PROSPERO C. OLIVAS and MAJOR LEONARDO B. TRINIDAD, Commanding General of the METROCOM and Executive Officer and Detachments, PAF, respectively,** *respondents.*

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[5] L-35546, Sept. 17, 1974; 59 SCRA 183.