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on public officers, servants and employees is to prevent them, from willfully and without just cause refusing or neglecting to perform their official duty-of paying petitioner the amount unlawfully deducted from the Workmen's Compensation Commission award in this case — and causing petitioner needless material and moral loss, despite the contrary directives of the Office of the President which were totally disregarded.

SECOND DIVISION

[G.R. No. L-48471. September 30, 1978]

IN THE MATTER OF THE PETITION FOR THE *HABEAS CORPUS* OF ENGILBERTO DACUYAN, BETTY A. DACUYAN, *petitioner, vs.* **GENERAL FIDEL RAMOS Chief, Philippine Constabulary,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; WHEN REMEDY APPROPRIATE. — *Habeas corpus* lies in case of loss of jurisdiction by a tribunal due to a denial of a constitutional right. It is the appropriate remedy where a military commission either lacks competence at the commencement of the proceedings or subsequently loses it.

2. ID.; ID.; ID.; DETENTION UPON ORDER OF THE MILITARY COMMISSION. WRIT NOT AVAILABLE WHERE DETAINEE FACES OTHER CHARGES AND ORDERS FOR HIS ARREST; CASE AT BAR. — Assuming that the order of arrest issued by Military Commission No. 25 is defective for non-compliance with the constitutional requirement as to a probable cause being determined by the judge or such other responsible officer authorized by law, where it is clear that the detainee is facing charges before the military tribunal as well as the Court of First

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Instance of Manila and that orders for his arrest other than that issued by the Military Commission exist, the writ of *habeas corpus* prayed for will not lie as the further detention is still legal and valid in view of the standing orders for his arrest.

APPEARANCES OF COUNSEL

Jerry D. Banares for petitioner.

Solicitor General E. P. Mendoza and *Assistant Solicitor General G. C. Nakar, Jr.* for respondent.

RESOLUTION

FERNANDO, *J.*:

The inquiry in this *habeas corpus* application concerns the validity of the detention of petitioner's husband, Engilberto Dacuyan, who was alleged to have been taken from their residence on May 19, 1978 by individuals posing as agents of the Philippine Constabulary and the Manila Command of the Integrated National Police, and thereafter "confined, restrained and deprived of his liberty at the Philippine Constabulary Detention Center, Camp Crame, Quezon City."[1] As of the date of the filing of this petition, "no formal complaint or accusation for any specific offense has been filed in any [form] against him nor any judicial writ or order for his commitment has at any time been issued [thus far]."[2] It way then stated that he "did not commit any offense for which he may be arrested or deprived of his liberty, without any formal charge," hence the illegality of "his continuous detention at the Philippine Constabulary Detention Center, Camp Crame, Quezon City."[3] With petitioner having "exhausted all efforts available at law for her husband's liberty but in vain and there [being] no other available plain, speedy, and adequate remedy in the ordinary course of law for

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[1] Petition, par. 2.

[2] *Ibid.*, par. 3.

[3] *Ibid.*, par. 4.

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her husband's personal liberty," recourse is had to this application.[4]

The application was filed on July 5, 1978. The Court on July 10 issued this resolution: "The Court [issued] the writ of *habeas corpus* returnable to this Court on Wednesday July 19, 1978 at 10:30 a.m. and required the respondent to make a [return] of the writ, not later than the aforesaid date and time."[5] The return was filed on July 18, 1978. As could be expected, it was alleged that there was no taint of illegality to the confinement of petitioner's husband, as there was a valid order of arrest, he being one of the accused in Criminal Case No. MC-25-46 pending before Military Commission No. 25 for the crime of illegal possession of firearm with kidnapping for ransom.[6]

There was a hearing on July 19, 1978 with Assistant Solicitor General Guillermo C. Nakar, Jr., counsel for respondent, being questioned extensively by all members of the Division to clarify the alleged act of arbitrariness which in the opinion of counsel for petitioner sufficed to oust the military commission of jurisdiction. Thereafter, the Court, in its resolution of the same date, required the parties to submit their simultaneous memoranda within five days, after which the case was deemed submitted for decision.

It was not until August 3, 1978, after a previous motion for extension of time, that counsel for petitioner submitted his memorandum. Stress is laid thereon on the respect that must be accorded the constitutional mandate that for a warrant of arrest to be validly issued, there must be a probable cause to be determined by the judge or such other responsible officer authorized by law after examination under oath or affirmation of the complainant and the witnesses that he may produce.[7]

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[4] *Ibid.*, par. 5.

[5] Resolution of this Court dated July 10, 1978.

[6] Return, pars. 4-5.

[7] This contention is based on the following provision of the Constitution: "The right of the people to be secure in their persons, houses, papers, and

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As was pointed out by counsel Jerry D. Banares in his memorandum: "By any stretch of the imagination, it cannot be said that a probable cause against Engilberto Dacuyan has been established by the evidence as would necessitate the issuance of a warrant of arrest. This postulate is bolstered by the fact that Engilberto Dacuyan's identity has not been positively established but is alluded to merely as 'Richard Doe — a Visayan.' The proper identification of the accused is the very quintessence and *sine qua non* of any valid prosecution, the very fundament of due process in any criminal trial (Concurring and Dissenting Opinion of Chief Justice Fred Ruiz Castro, *Aquino, Jr. v. Military Commission No. 2, et al.*, L-37364, May 9, 1975). We do not see any reason why the same principle on identification be made applicable in determining a probable cause to effect a valid issue of a warrant of arrest. After all the constitution requires the person to be arrested and/or seized particularly described."[8] The other point raised is whether the warrant of arrest issued by a certain Major Ido A. Abdullah, trial counsel of Military Commission No. 25, would satisfy the constitutional requirement as to a probable cause being determined by the judge or such other responsible officer authorized by law.[9] While not questioning, therefore, the power of such military commission to try cases against civilians, he challenged the authority of Major Abdullah as trial counsel to issue the warrant of arrest. In the light of the above jurisdictional defect, there being what for him is a clear deprivation of a constitutional right, he asserted that the continued confinement of Dacuyan is devoid of support in law.

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effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest 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 persons or things to be seized." Article IV, Section 3 of the Constitution.

[8] Memorandum for the Petitioner, II.

[9] *Ibid.*, 12.

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The principal issue raised is clearly impressed with significance. It has been settled law since the landmark opinion of Justice Malcolm in *Conde v. Rivera*,[10] a 1924 decision, that *habeas corpus* lies in case of loss of jurisdiction by a tribunal due to a denial of a constitutional right. There was an earlier pronouncement by this Court that *habeas corpus* is the appropriate remedy where a military commission either lacks competence at the commencement of the proceedings or subsequently loses it. So it was held in *Payomo v. Floyd*,[11] promulgated in 1922, Such a doctrine has been adhered to consistently all these years, the last two cases where it was sought to be applied being *Go v. General Olivas*[12] and *Romero v. Ponce Enrile*.[13] There is, however, no need to pass on such a question in this proceeding in the light of these assertions in the memorandum of the Office of the Solicitor General: "By virtue of information delivered to undersigned counsel on July 21, 1978, it was learned that Engilberto Dacuyan is an accused: 1. In Criminal Case No. 38475 before the Circuit Criminal Court of Manila, for theft, which case was raffled to the Court of First Instance of Manila, Branch VII and for which an Order of Arrest has been issued on June 9, 1978; 2. In Criminal Case No. 38336 before the Court of First Instance of Manila, Branch XVII, for theft ***; 3. In Criminal Case No. 38305 before the Court of First Instance of Manila, Branch XXVI, for theft ***; 4. In Criminal Case No. 38335 before the Court of First Instance of Manila, Branch XXVI, for theft ***; 5. In Criminal Case No. 38398 before the Court of First Instance of Manila, Branch IX, for theft, for which an Order of Arrest has been issued on July 21, 1978 ***. Assuming, therefore, the order of arrest issued by MC 25 to have been defective, the further detention of Engilberto Dacuyan is still valid and legal in view of the standing orders of arrest issued by the Court of First Instance

[10] 45 Phil. 650.

[11] 42 Phil. 788.

[12] L-37364, May 9, 1975, 63 SCRA 546.

[13] L-44613, February 28, 1977, 75 SCRA 429.

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of Manila. The other courts before which Dacuyan is facing other charges will most certainly issue their own warrants for his arrest, now that coordination between the Military and the former discloses Dacuyan's whereabouts. As a matter of fact, such coordination has resulted in the turnover today, July 24, 1978, of the person of Engilberto Dacuyan 'by the PC authorities to the City Warden of Manila thru the Warrant and Subpoena Division, Western Police District, Metropolitan Police Force ***. It is now clear that Engilberto Dacuyan is facing charges before the military tribunal as well, as the Court of First Instance of Manila, and that orders for his arrest other than that issued by Military Commission No. 25 exist. Under these premises, the writ prayed for will not lie (Sec. 4, Rule 102, Revised Rules of Court)."[14] The memorandum was filed with this Court on July 24, 1978, a copy thereof being duly furnished petitioner as therein noted. Notwithstanding the time that had elapsed, there was no denial on the part of petitioner. Under the circumstances, his release cannot be ordered by this Court.

WHEREFORE, the petition is dismissed. No costs.

Barredo, Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

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[14] Memorandum of Respondent, 12-14.