

BURMA LAW REPORTS

SUPREME COURT.

MA THAN SINT (APPLICANT)

v.

THE COMMISSIONER OF POLICE, RANGOON
AND ONE (RESPONDENTS).*

†S.C.
1948

Nov. 19.

*Press (Registration) Act—S. 5A (1) (b), Public Order (Preservation) Act, 1947—
Publication in the newspaper—Party responsible—Object of the Act.*

The *détenué* was alleged to be the editor of a paper and to be responsible for the publication of information about the arrival of Gurkha troops which was false and it was alleged that the effect of such publication would be to arouse ill-feeling against the Government.

Held : That under the Press (Registration) Act one U Than Tun's name is printed on every issue as Editor and not that of the *détenué*. If *détenué* was not the Editor the detention was not proper.

Held further : That assuming the report to be false and misleading it does not follow that the effect would be to prejudice public safety and the maintenance of public order. If the effect was to excite dissatisfaction towards the Government steps should be taken under s. 124A of the Penal Code. Public Order (Preservation) Act, 1947 was enacted in the interest of preventive justice and not for providing additional punishment for an act which would be penal under the law in force. The jurisdiction to order detention arises only where the authority empowered is satisfied that action is necessary with a view to prevent a person from acting in any manner prejudicial to public safety and for the maintenance of public order.

In the absence of both these elements the detention was unlawful.

Applicant in person.

Ba Sein (Government Advocate) for the respondents.

The judgment of the Court was delivered by

MR. JUSTICE E MAUNG.—In these proceedings the applicant questions her brother's detention under the

* Criminal Misc. Application No. 58 of 1948.

† Before SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE E MAUNG and MR. JUSTICE KYAW MYINT.

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orders of the Commissioner of Police, Rangoon, dated the 12th August 1948 under section 5A (1) (b) of the Public Order (Preservation) Act, 1947.

The Commissioner of Police seeks to justify the detention on the ground that the applicant's brother, Maung Than Nyunt, being an editor of the *Guide Daily*, a Burmese Newspaper published at Rangoon, was responsible for the publication in the issue of the *Guide Daily* of the 12th August 1948 of a report "concerning the alleged arrival of 2,000 Gurkha troops and Government's request for foreign help to quell the insurrection, and that in consequence, about 50 planes and the 14th Army would arrive in Rangoon within a fortnight's time." The Commissioner of Police states that the report was completely false and that its effect would be to arouse ill-will and ill-feeling against the Government of the day and thereby lead to "serious political complication and disturbance of peace and tranquillity."

The applicant, in her original application which was supported by an affidavit, as also in her reply affidavit, claimed that her brother Maung Than Nyunt, though employed in the *Guide Daily* Press, was not the Editor of the Press. She claims further that one U Than Tun is the Editor of the *Guide Daily* and that this U Than Tun's name is printed on every issue of the *Guide Daily* as the Editor in compliance with section 5 (1) of the Press (Registration) Act.

The last allegation of the applicant has not been in any way controverted by the Commissioner of Police. We are therefore entitled to accept the assertion of the applicant that U Than Tun is the Editor of the *Guide Daily* and was held out as such under the Press (Registration) Act, though it is quite possible that Maung Than Nyunt held a subordinate position on the editorial staff of the said newspaper.

It is difficult to agree with the Commissioner of Police that, assuming the report taken exception to by him and appearing in the *Guide Daily* of the 12th August 1948 to be false and misleading, the effect of that report would be to prejudice public safety and the maintenance of public order. It may be, as the Commissioner of Police claims, that such a report would have the effect of exciting dissatisfaction towards the Government of the day. If that be so, the appropriate step to be taken by him would appear to be a prosecution under section 124A of the Penal Code.

We have repeatedly held that the Public Order (Preservation) Act was enacted in the interest of preventive justice and not for the purpose of providing additional punishment for an act which would be penal under any law in force. Moreover, as is clear from the wording of section 5A of the Public Order (Preservation) Act, the jurisdiction to order a detention under that section arises only where the authority empowered under that section is satisfied that it is necessary to take action "with a view to prevent" the person against whom action is to be taken under the Act "from acting in any manner prejudicial to public safety and the maintenance of public order." In other words, before action under section 5A of the Act can with justice be taken there must be materials from which it can be deduced, not merely that a certain person has committed a wrongful act but that that person, if left at liberty, would be likely to act in such a way as would be prejudicial to public safety or the maintenance of public order.

The return made by the Commissioner of Police does not, in our opinion, justify the detention of Maung Than Nyunt under the Public Order (Preservation) Act. In the first place, on the materials

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placed before us, it cannot be said that Maung Than Nyunt's responsibility for the publication of the report in question is, or can be said to be, established to any reasonable mind. In the second place, assuming Maung Than Nyunt's responsibility for the report, the appropriate step to be taken against him is clearly under the ordinary penal laws. There is nothing in the return to show that the Commissioner of Police could have entertained reasonable apprehension of threatened prejudice to public safety or the maintenance of public order.

Maung Than Nyunt who had been released on bail pending the disposal of this application is therefore discharged. His bail bond will be cancelled.