

SUPREME COURT.

TINSA MAW NAING (APPLICANT)

v.

COMMISSIONER OF POLICE, RANGOON,
AND ANOTHER (RESPONDENTS).*

1948

Aug. 11.

[On appeal from the High Court.]

Public Order (Preservation) Act, 1947 (Act XVI of 1947), as amended by Act XXVIII of 1947—S. 5A (1) (b)—Power of Court to examine the return.

Held: The Court has power to examine the truth of the facts set forth in a return for *habeas corpus* but such an examination shall be done in a summary way by affidavit or affirmation.

Kin Ma Ma v. The Chairman, Public Property Protection Board and one (Criminal Misc. Application No. 12 of 1948), followed.

Where the activities of the person detained as set forth in the writ amounts to offences under the Penal law, the Supreme Court has no power to order the officer to prosecute him under the Penal law and not to detain him under the Public Order (Preservation) Act. Bare assertion by applicant suggesting that the Commissioner of Police is not acting in good faith is insufficient to prove that fact especially when he has arrived at a certain finding of fact on the materials before him.

Choung Po for the applicant.

Chan Htoon (Attorney-General of the Union of Burma) for the respondents.

The judgment of the Court was delivered by

KYAW MYINT, J.—The applicant in this case prays for directions in the nature of *habeas corpus* relating to her husband, Bo Yan Naing who is under detention under section 5A (1) (b) of the Public Order (Preservation) Act, 1947 (Act XVI of 1947), as amended by Act XXVIII of 1947.

The 1st respondent, the Commissioner of Police, Rangoon, who passed the order of detention on the

* Criminal Misc. Application No. 15 of 1948.

† Present: SIR BA U, Chief Justice, E MAUNG, J., and KYAW MYINT, J.

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14th July 1948, has set out in his affidavit the particulars of the information he received regarding the activities of Bo Yan Naing, upon which he was satisfied that Bo Yan Naing was acting in a manner prejudicial to the public safety and the maintenance of public order.

The applicant in her affidavit in reply denies the truth of the allegations against Bo Yan Naing and it has been strenuously contended on her behalf that upon such denial the Court is bound to hold an enquiry by taking evidence.

A similar situation arose in this Court in the case of *Kin Ma Ma v. The Chairman, Public Property Protection Board and one* (Criminal Miscellaneous Application No. 12 of 1948). After an examination of the relevant English authorities and of section 3 of the *Habeas Corpus* Act of 1816, this Court came to the conclusion that, while the Court has power to examine the truth of the facts set forth in a return to a writ of *habeas corpus*, such an examination shall be done in a summary way by affidavit or affirmation.

It has also been contended that the alleged activities of Bo Yan Naing amount to offences under the penal law and that the 1st respondent, instead of ordering his detention, should have instituted criminal proceedings in the Courts. This Court however has no power to order the 1st respondent to follow any particular course.

The nature and scope of directions in the nature of *habeas corpus* has been explained by this Court in the case of *G. N. Banerji v. The Superintendent of the Jail at Insein* (Criminal Miscellaneous Application No. 5 of 1948) and it is unnecessary to repeat what was stated therein.

The 1st respondent has placed before the Court the materials upon which he came to the conclusion that Bo Yan Naing was acting in a manner prejudicial

to the public safety and the maintenance of public order. It is not contended that the 1st respondent did not in fact receive the information which he states that he received. There is nothing except the bare assertion of the applicant to suggest that the 1st respondent was not acting *bona fide* in passing the order of detention. He arrived in good faith at a certain finding of fact, and it is not for this Court to say that he should not have arrived at such a finding.

The application is dismissed.

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