

SUPREME COURT.

MA AYE KYI (APPLICANT)

v.

COMMISSIONER OF POLICE, RANGOON
AND ONE (RESPONDENTS).*† S.C.
1948

Oct. 6.

Order in the nature of habeas corpus—Detention under Public Order (Preservation) Act—Arrest in Insein and subsequent order by the Commissioner of Police, Rangoon, for detention whether illegal.

Held: Under Notification No. 519 the power of the Commissioner of Police, Rangoon, to order detention under s. 5A of the Act is limited to residents of Rangoon or the activities must be within the Town of Rangoon. When a person was not a resident in the Town of Rangoon or his activities do not constitute a menace to public safety or public order in the Town of Rangoon, the Commissioner of Police, Rangoon, has no jurisdiction to order detention. If such a person is arrested in Insein District and later brought to Rangoon, the Commissioner of Police cannot order his detention.

A verbal order of detention cannot later be confirmed by a written order of detention. Such orders are illegal.

Bo San Lin v. Commissioner of Police, (1948) Bur. L.R. 372, followed.

When a person has been tried for an offence in a court of justice and is acquitted he cannot be arrested on suspicion of committing the same offence under Public Order (Preservation) Act. It would be an abuse of the provisions of the Act.

Applicant in person.

Chan. Tun Aung (Assistant Attorney-General) for the respondents.

The judgment of the Court was delivered by

E MAUNG, J.—We are satisfied that the order of detention made by the Commissioner of Police in this case cannot be supported. The applicant's

* Criminal Misc. Application No. 31 of 1948.

† Present: SIR BA U, Chief Justice of the Union of Burma, E MAUNG, J., and KYAW MYINT, J., of the Supreme Court.

husband Maung San Mya, who admittedly is a permanent resident of Thamaing, in Insein District, was taken into custody on the 19th February 1948, by police officers and brought over to Kamayut Police Station which is within the jurisdiction of the Rangoon Town Police. It is quite apparent from the record that immediately after he arrived at the police-station at Kamayut, the Commissioner of Police made a verbal order directing his detention under section 5A of the Public Order (Preservation) Act, 1947. This verbal order was followed, seven days later, by an order in writing which directed that Maung San Mya, son of U Po Myint, be detained in Insein Central Jail until further orders with effect from the 19th February 1948. We find, however, that the man was detained in the Town Lock-up till the 8th March 1948, when he was taken to the Insein Jail. No explanation for this delay in despatching Maung San Mya to Insein Jail has been placed before us by the Assistant Attorney-General who appears on behalf of the Commissioner of Police.

The Commissioner of Police in taking action under section 5A of the Public Order (Preservation) Act is exercising powers which have been delegated to him by the President under section 7 of the Act. His authority under this delegation is limited. By Notification No. 519 of the Home Department, dated the 4th June 1947, the Commissioner of Police was authorized to exercise powers under section 5A of the Act within his jurisdiction. His jurisdiction extends only to the Town of Rangoon. To give him jurisdiction to take action against a person, either that person must, in our opinion, be resident within the Town of Rangoon, or that his activities which constitute a menace to public safety or public order must have been carried on within the Town of Rangoon. In this case it is clear

S.C.
1948MA AYE KYI
v.COMMISSIONER OF
POLICE,
RANGOON
AND ONE.

E MAUNG, J.

S.C.
1948

MA AYE KYI

v.

COMMISSIONER OF
POLICE,
RANGOON
AND ONE.

E MAUNG, J.

from the return made by the Commissioner of Police that neither condition is fulfilled.

In the first place it has been suggested on behalf of the Commissioner of Police by the learned Assistant Attorney-General that Maung San Mya having been brought in custody to a police-station within the Rangoon Town jurisdiction, the Commissioner of Police was justified in taking action under section 5A of the Public Order (Preservation) Act. We cannot understand how by bringing a person from outside his jurisdiction under arrest, the Commissioner of Police can give himself jurisdiction to act under the Act. It is, in our opinion, an unjustifiable extension of his jurisdiction. Further, the return does not state that the activities which are ascribed to Maung San Mya were carried on within the Town of Rangoon; it is vaguely said in clause (i) of the return that Maung San Mya and others were engaged in unlawful activities which resulted in the theft or misappropriation of civil supplies goods while in transit from Rangoon to the districts. It is clear from this return that the Commissioner of Police has not been able to make up his mind where the loss, if any, took place. In other words, he acted on mere suspicion that somewhere within the Union, either at Rangoon or elsewhere, civil supplies goods have been lost, and that Maung San Mya, a person who has been ordered to be detained, had something to do with the loss. This suspicion, in our opinion, is not enough to justify the Commissioner of Police to act in the manner he did. We have held repeatedly in cases under the Public Order (Preservation) Act that the authority who acts under section 5 or section 5A of the Act has to act in a judicial manner.

In *Bo San Lin v. Commissioner of Police* (1) we have already considered the effect of a verbal order of

(1) (1948) Bur. L.R. 372.

detention followed later by a written order of detention, and we have there laid down that the original order as well as the subsequent order of detention would not in any way legalize the detention of a person. That decision in itself would be sufficient to justify our directing the release of Maung San Mya in this case.

It is not necessary for us to go deeply into the further question whether on the merits the detention of Maung San Mya was justified or not. The return states that Maung San Mya, if left at liberty, would be a menace to civil supplies goods. This is not what section 5A of the Public Order (Preservation) Act is intended for. That section speaks of a person whose activities are detrimental to public safety or public order. Further, the materials before us appear to suggest in the detention of Maung San Mya's persecution in respect of an alleged offence for which the authorities had not been able to convict him before a Court of competent jurisdiction. Maung San Mya and others were arrested for alleged offences under sections 409, 414 and 411 of the Penal Code in respect of civil supplies goods valued at Rs. 16,329. They were sent up for trial before Mr. Justice Thaug Sein of the High Court and a Jury, in Criminal Sessions Trial No. 2 of 1948. The accused were all acquitted, and the verdict of the Jury in each case was unanimous. Moreover, as it appears from the summing-up of the learned Judge, even the approver could not say anything against Maung San Mya. Following this acquittal on the unanimous verdict of "not guilty" by the Jury on the 6th February 1948, Maung San Mya was again arrested on the 19th February 1948, and, as is clear from the return, his arrest was sought to be justified for the same offence. This, in our opinion, is an abuse of the provisions of the Act.

S.C.
1948

MA AYE KYI
v

COMMISSIONER OF
POLICE,
RANGOON
AND ONE.

E MAUNG, J.

S.C
1948

MA AYE KYI
v.

COMMISSIONER OF
POLICE,
RANGOON
AND ONE.

E MAUNG, J.

We direct that Maung San Mya, who is at present before us to-day on bail, be released. The bail bond which has been entered into on his behalf will be cancelled.