

SUPREME COURT.

MA LONE (APPLICANT)

v.

THE COMMISSIONER OF POLICE, RANGOON
AND ONE (RESPONDENTS).**Public Order (Preservation) Act, 1947—Ss. 5 and 5A—Length of detention—
Law explained.*

Held: Under sub-s. (1) of s. 5 any Police Officer of the type described can arrest without a warrant and commit him to custody for not more than 15 days under the first proviso to sub-s. (2). In the meantime he must submit his report to the President or any officer empowered to act on his behalf. Under sub-s. (4) the President or any officer empowered to act on his behalf can if empowered by any law other than the one in sub-s. (4) pass a final order relating to the detention, etc.; the only law in this behalf is contained in s. 5A. S. 5, clause (4), may be described as an enabling section and s. 5A as a penal section. If the Commissioner of Police intended to order the detention of the *détenu* for more than two months he can on receipt of the report from the arresting officer pass a final order straight away under s. 5A, clause (b).

In the present case the Commissioner passed an order of detention for an indefinite period under s. 5 (4). He could not do this and the *détenues* cannot be detained for more than two months. They must therefore be released.

Applicant in person.

Ba Sein (Government Advocate) for the respondents.

The judgment of the Court was delivered by

SIR BA U, C.J.—We regret to note that some of the Acts placed on the Statute Book in 1947 have been so badly drafted that they have given rise to such misunderstanding and confusion as to interfere with the due administration of justice. The sooner some of these Acts are amended, the better it will be for everybody concerned. The one now in question is the

* Criminal Misc. Application No. 41 of 1948.

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

Public Order (Preservation) Act, 1947, as amended by the amending Act, being Act No. XXVIII of 1947, and the amending Act, being Act No. LXXIX of 1947. It is a much misunderstood and much misused Act.

In exercise of the powers conferred by section 5 (1) of the said Act, U Than Sein, Police Station Officer, Thingangyun, arrested Kyaw Thein and eight of his cultivators, namely, Pu Gyi, Yan Aye, Maung Saw, Tin Aung, Tin Aye, Maung Khwe, Maung Thaug and Tun Thein, on the 16th September 1948. Then in exercise of the powers conferred by section 5 (2) he committed all the aforesaid persons to custody at the Rangoon Town Lock-up, and thereafter submitted a report to the Commissioner of Police, Rangoon Town. On receipt of the report the Commissioner of Police passed the following order :

" OFFICE OF THE COMMISSIONER OF
POLICE, RANGOON.

I.B. ORDER No. 5017.

Dated the 17th September 1948.

**Order under section 5 (4), Public Order
(Preservation) Act, 1947.**

WHEREAS being satisfied that KYAW THEIN son of U SEIN PO is acting in a manner prejudicial to public safety and maintenance of public order contrary to the provisions of the Public Order (Preservation) Act, 1947, I, U AUNG CHEIN, Commissioner of Police, Rangoon, hereby order that the said KYAW THEIN be detained under section 5 (4) of the Public Order (Preservation) Act, 1947, in any of the following places of custody, viz :—

- (1) Rangoon Town Lock-up, Barr Street.
- (2) Any Police Station or Out-post in the Rangoon City.
- (3) The Rangoon Central Jail.
- (4) The Insein Central Jail.
- (5) The Insein Jail Annexe."

Similar orders were passed in respect of the other persons. On the same date, *i.e.* the 17th September

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Hla Maung, another cultivator of Kyaw Thein, was arrested by U Ba Than, Police Station Officer, Port Police Station, Rangoon. We do not know whether the Commissioner of Police passed any order on Hla Maung as he did in the case of the other *détenues*. His order has not been placed before us. We would, however, assume that he did pass an order similar to those which he had passed on other *détenues*.

The question that arises now is whether these *détenues* can be kept under detention for more than two months. The answer to this question depends on what construction is to be put on section 5 (4) of the Public Order (Preservation) Act. In order to get a clear meaning of this section, it must be read together with sub-section (1) and sub-section (2) of section 5. Under sub-section (1), any police officer not below the rank of a Sub-Inspector of Police can arrest without a warrant any person whom he reasonably suspects of having committed, of committing, or about to commit any of the acts mentioned in sub-section (1) (a) and (b) and commit him to custody for not more than 15 days under the first proviso to sub-section (2). In the meantime, he must submit his report of the arrest to the President or any officer empowered by the President to act on his behalf. The officer so empowered by the President can order the detention of the *détenu* under the second proviso to the aforesaid sub-section for not more than two months.

Now, we must turn to sub-section (4) and see whether the detaining authority can order the detention of the *détenu* for more than two months as allowed by the second proviso to sub-section (2). This depends upon what construction is to be put on the following :
“ . . . the President may, in addition to making such orders subject to the second proviso to sub-section (2) as may appear to be necessary for the temporary

custody of any person arrested under this section, make, in exercise of any powers conferred upon the President by any law for the time in being force, such final order as to his detention, release, residence or any other matter concerning him as may appear to the President in the circumstances of the case to be reasonable or necessary." What it means is that the President or any officer empowered by the President to act on his behalf, if empowered by any law other than the one contained in sub-section (4), can pass a final order relating to the detention, release, residence or any other matter concerning the *détenu*.

The only law under which the President or any officer empowered by the President to act on his behalf can pass a final order relating to the detention, release, residence or any other matter concerning the *détenu* is the law contained in section 5A of the Public Order (Preservation) Act.

Section 5 (4) may be described as an enabling section, and section 5A may be described as a penal section, of the Public Order (Preservation) Act.

Therefore, what the Commissioner of Police should have done in the present case on receipt of the report from the arresting officer was, if he chose to do so, to order a temporary detention of the *détenu* for not more than two months in exercise of the power conferred by section 5 (2), proviso (ii), of the Public Order (Preservation) Act. And thereafter, he could pass a final order under section 5A (b). If he intended to order the detention of the *détenu* for more than two months and he did not choose to order a temporary detention only, he could, on receipt of a report from the arresting officer, pass a final order straightaway under section 5A (b) of the Public Order (Preservation) Act.

In the present case, what the Commissioner of Police did was to pass an order of detention of the

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détenues for an indefinite period of time under section 5 (4), which he could not do. Such being the case, the *détenu* in this case cannot be detained for more than two months. The *détenues* must, therefore, be released as the period of their detention has already exceeded two months.

We accordingly, as the *détenues* are now on bail, direct their discharge forthwith, and direct the cancellation of their bail bonds. The order of detention as passed by the Commissioner of Police is set aside.