

SUPREME COURT.

MA HLA YI (APPLICANT)

v.

THE COMMISSIONER OF POLICE, RANGOON
AND ONE (RESPONDENTS). **Public Order (Preservation) Act, 1947—S. 5A, Clause (4).*

Held: That the order of detention under s. 5A is not as in the case of an order under s. 5 (4) automatic on the original arrest under s. 5 (1) by the Police Officer being reported. The legality of the original arrest is to be justified before the court under s. 5 but under s. 5A what has to be justified is the sufficiency of grounds of the subsequent order of detention and not the legality of the original arrest. As the Commissioner of Police did not mention what he found on further enquiry in respect of the detenu to justify action under s. 5A the detention was unexplained and was not justified.

Applicant in person.

Ba Sein (Government Advocate) for the respondents.

The judgment of the Court was delivered by

MR. JUSTICE KYAW MYINT.—The detention of Maung Tun, the applicant's husband, was ordered by the Commissioner of Police, Rangoon, on the 1st September 1948 under section 5A of the Public Order (Preservation) Act. The Commissioner of Police in paragraph 4 of his affidavit states :

“ I say that as soon as the said Police Officer arrested the said Maung Tun a report was sent to me forthwith about his arrest, and I say that on receipt of the said report and upon further enquiry by me I am thoroughly satisfied that the said Maung Tun should be detained with a view to prevent him from acting in a manner calculated to disturb public peace and tranquillity and

*Criminal Misc. Application No. 114 of 1948.

† Before MR. JUSTICE E MAUNG, and MR. JUSTICE KYAW MYINT and U ON PE, J.

accordingly under sub-section (1) (b) of section 5A of the Public Order (Preservation) Act, 1947, I ordered the detention of the said person in the Rangoon Central Jail."

We have on several occasions stated from this place that, where the order is made under section 5A of the Public Order (Preservation) Act, the actual order of detention made by the authority empowered to act under that section has to be justified. The order of detention under section 5A is not, as in the case of an order of detention under section 5 (4) of the Act, automatic on the original arrest under section 5 (1) by the Police Officer being reported. In the case of section 5 what should be justified before this Court is the legality of the original arrest; but in detentions under section 5A what has to be justified is not the legality of the original arrest but the sufficiency of the subsequent order of detention. The Commissioner of Police has not told us in this case what he has found on further enquiry Maung Tun has done or was about to do to justify action under section 5A of the Act. The said detention therefore remains unexplained.

The detainee Maung Tun will therefore be forthwith released.

S.C.
1948

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