

SUPREME COURT.

MA THAUNG KYI (APPLICANT)

v.

THE DEPUTY COMMISSIONER, HANTHA-
WADDY AND ONE (RESPONDENTS). *† S.C.
1948

Dec. 13.

Public Order Preservation (Amendment) Act, 1947—S. 5A 1 (b).

The District Superintendent of Police, Hanthawaddy, sent a report containing 28 names to the Deputy Commissioner, Hanthawaddy, and mentioned that they were arrested in connection with country-wide Burma Communists Party activities prevailing in the District. On this report the Deputy Commissioner passed an order "Put up order under s. 5A (1), sub-clause (b) of POPA (Public Order Preservation Act).

Held: That the case of each of the persons was not considered and there were no materials on which the Deputy Commissioner could have come to a judicial finding required by law.

Held further: That the Deputy Commissioner could not delegate his functions in this respect of coming to a definite conclusion to the District Superintendent of Police and merely pass a "rubber stamp" order.

Applicant in person.

Ba Sein (Government Advocate) for the Respondents.

The judgment of the Court was delivered by

MR. JUSTICE KYAW MYINT.—The learned Government Advocate has kindly placed before us the proceedings in which orders directing the detention of the applicant's husband Maung Maung Gyi and 27 other persons were passed. It is clear from these proceedings, read together with the materials on the record before us, that on the 15th April 1948 some 28 persons were arrested at various places in Pegu, Kayan and Twante Townships. These 28 persons have their names listed

* Criminal Misc. Application No. 93 of 1948.

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

in one report by the District Superintendent of Police, Hanthawaddy, to the Deputy Commissioner, Hanthawaddy. The report reads as follows :

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"The following are arrested in connection with the unholy country-wide BCP activities now prevailing in this district. They are reported to be active members of BCP, leaders and sympathisers of Red Guards and Peasants Union sponsored by BCP. In fact acting in the manner prejudicial to the public safety and maintenance of public order. In view of the present political situation they may be detained until further orders under section 5A (1) (b) POPA (Amendment) Act, 1947."

On this report the following note was made by the Deputy Commissioner :

"Put up order under section 5A (1) (b), POPA."

It is clear from these materials that the Deputy Commissioner did not consider the case of each of the persons proposed to be taken into custody by the District Superintendent of Police on its merits. In fact, there were no materials on which the Deputy Commissioner could have come to a judicial finding that the detention of each of these persons was necessary in the interest of public safety and the maintenance of public order.

We have repeatedly stated that an order under section 5A of the Public Order (Preservation) Act can be made only where on the facts of each case the officer authorizing the detention has come to a definite conclusion required under the Act. It is not for the Deputy Commissioner to delegate his functions in this respect to the District Superintendent of Police and merely pass what is sometimes described as a "rubber-stamp" order.

The applicant's husband Maung Maung Gyi, therefore will be forthwith released.