

SUPREME COURT.

DAW MYA TIN (APPLICANT)

v.

THE COMMISSIONER OF POLICE, RANGOON
AND ONE (RESPONDENTS).*† S.O.
1949

May 16.

Direction in the nature of habeas corpus—Before release fresh order of detention under s. 5A (1) (b) of the Public Order (Preservation) Act, 1947—Whether such order legal.

Held: Where a person has been discharged or ordered to be discharged from custody under directions in the nature of *habeas corpus* given by the Supreme Court on the ground that his detention is illegal in consequence of a technical defect of law in the proceedings terminating in the detention order passed against him, he can be re-arrested and detained or if still in custody continued to be detained under a fresh order of detention under s. 5A (1) (b) of the Public Order (Preservation) Act, 1947.

Rex v. Secretary of State for Home Affairs, (1942) 2 K.B. 14 at p. 25 ;
Rex v. Governor of Brixton Prison, (1912) 3 K.B. 424, followed.

Ba Maung for the applicant.

Ba Sein (Government Advocate) for the respondents.

The judgment of the Court was delivered by

SIR BA U, C.J.—U Wann Maung, the detenu in this case, was a Sub-Inspector of Police in the Rangoon Town Police Force. In or about 1946 he became the President of the Rangoon Police Force Association. While he was holding that office the Rangoon Police Force went on strike. The strike soon spread to the police in the districts with the result that the administration of the country became disorganized. It was settled after it had lasted for about a month.

* Criminal Misc. Application No. 108 of 1949.

† Present: SIR BA U, Chief Justice of the Union of Burma; MR. JUSTICE KYAW MYINT and MR. JUSTICE TUN BYU.

After the strike U Wann Maung evidently gained in stature and status for he became the President not only of the Rangoon Police Force but also of the All-Burma Police Association. Reaction soon set in—as usually happens in politics in Burma—and U Wann Maung was deposed from the Presidentship of the All-Burma Police Association. U Wann Maung refused to accept his defeat meekly ; he collected his followers and formed a rival association. In or about that time Government made a cut of Rs. 20 in the Cost of Living Allowance. Seizing this as an excuse U Wann Maung staged a demonstration by parading with some of his followers in front of several police stations in Rangoon. This happened in 1947. He then fixed his headquarters at Mogaung, a suburb of Rangoon, and called his association "Peoples Steel Police Union". Government then began to take serious notice of U Wann Maung's activities. Sensing his danger U Wann Maung left his headquarters and went into hiding but he was soon ferreted out of his hiding place at Tapun in Tharrawaddy District and placed under detention in Tharrawaddy Jail. He was later transferred to Shwebo Jail and from there he was taken in February 1948 to Moulmein Jail.

While under incarceration in Moulmein Jail an application was made on his behalf for issue of directions in the nature of *habeas corpus*. But, as at the time constitutional remedies were suspended in Moulmein as Moulmein was under military administration the application was dismissed. When the military administration came to an end a fresh application was filed on his behalf and this application was allowed as there was a technical defect or flaw in the proceedings in which the order for his detention was passed. A few days before this Court passed the order directing his release, the Commissioner of Police

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passed a fresh order of detention under section 5A (1) (b) of the Public Order (Preservation) Act. The result is that the fresh order of detention has effectively nullified the order of release passed by this Court.

The question that therefore arises is whether a person who has been discharged from custody upon directions given by this Court in the nature of *habeas corpus* on the ground that his detention was illegal in consequence of a technical defect or flaw in the proceedings terminating in the detention order passed against him can be arrested and detained under a fresh order of detention? This question can best be answered by what Lord Greene M.R. observed in *Rex v. Secretary of State for Home Affairs* (1). In that case that learned Master of Rolls said :

“The argument presented to us was based on the proposition that a person who has been released from custody on a “writ of *habeas corpus* cannot be subjected to a second detention for the same cause. This argument is, in our opinion, misconceived. The first detention of the applicant was illegal in that the prerequisites of a lawful detention had not been complied with. In the case of the present detention, those prerequisites have been complied with and the detention is lawful.”

See also the case of *Rex v. Governor of Brixton Prison* (2). Though the observations in that case were made with reference to section 6 of the *Habeas Corpus* Act, 1679, they are equally relevant in the present case inasmuch as the principle enunciated there is of universal application : the principle being that no man should be put in peril for his life or limb twice for the same offence and on the same facts.

Now, dealing with the facts of the present case what is alleged and not seriously controverted is that when a split took place in the All-Burma Police Association

(1) (1942) 2 K.B. 14 at p. 25.

(2) (1912) 3 K.B. 424.

the detenu collected his followers, made a demonstration in front of several police stations in Rangoon calling on the members of the Police Force to desert their post and join him, and thereafter fixed his headquarters at Mogaung with the object of overthrowing the lawfully constituted Government by disorganization of the administration of the country. Such an act was undoubtedly a treasonable act and the man who promoted it or attempted to promote it brought himself within the purview of the Public Order (Preservation) Act.

The application is dismissed.

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