

SUPREME COURT.

DAW MYA TIN (APPLICANT)

v.

THE DEPUTY COMMISSIONER, SHWEDO AND
ONE (RESPONDENTS).*† S.C.
1949

Mar. 15.

Public Order (Preservation) Act—Exercise of discretion must be by the Officer making the order—Delegation of power to the Deputy Commissioner—Whether Additional Deputy Commissioner can exercise such power.

Held: The quasi-judicial act of directing the preventive detention of a Citizen for an indefinite period under Public Order (Preservation) Act is in exercise of the discretion of the Officer who makes the order. Where the Officer does not exercise his own discretion but acted automatically on the instructions of the Deputy Inspector-General of Police, his order is illegal.

It is a matter for consideration whether powers delegated to the Deputy Commissioner under the Public Order (Preservation) Act, can be exercised by the Additional Deputy Commissioner.

Ba Maung for the applicant.

Ba Sein (Government Advocate) for the respondents.

The judgment of the Court was delivered by

MR. JUSTICE E MAUNG.—On summons being issued to the Superintendent of Jail, Moulmein, who has the custody of the person of the applicant's husband Maung Wan Maung (at one time a Sub-Inspector of Police) a return was made by him by his affidavit of the 5th February 1949. He claims that the detention of Maung Wan Maung is legal as it is under an order of detention issued by the Deputy Commissioner, Shwebo, and refers to Detention Order No. 67

* Criminal Misc. Application No. 64 of 1949 of the Supreme Court of the Union of Burma.

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

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of 1947 issued from the Office of the Deputy Commissioner, Shwebo, on the 17th October 1947. A certified copy of the Detention Order is placed before us.

In the first place, though the Detention Order in question purports to have been issued from the Office of the Deputy Commissioner, Shwebo, it was under the hand of U Ko Ko who describes himself as "Additional District Magistrate, Shwebo". It is not at all clear whether U Ko Ko, in addition to being an Additional District Magistrate for Shwebo under the Code of Criminal Procedure, has also been appointed Additional Deputy Commissioner for Shwebo. It is also a matter for consideration, at the proper time, whether the delegation of powers under the Public Order (Preservation) Act by the President of the Union to Deputy Commissioners would entitle Additional Deputy Commissioners to act under the same delegation.

These matters are, however, not necessary to be pursued in this case, for, assuming that U Ko Ko had all the powers of the Deputy Commissioner of Shwebo, the order of detention on the face of it is clearly illegal. It reads as follows :

"Under the instructions of the D.I.G., C.I.D., Burma, Rangoon, in his Confidential Intelligence Branch No. 163561, dated the 15th October 1947, S.I.P. Maung Wan Maung will be detained in the Shwebo Jail until further orders, under section 5 of the Public Order (Preservation) (Amendment) Act, 1947.

He will be placed in 'B' Class."

The quasi-judicial act of directing the preventive detention of a citizen for an indefinite period is in the exercise of the discretion of the person who makes the order. In the present case it is clear that U Ko Ko never in fact applied his mind to the necessity or otherwise of Maung Wan Maung's detention. He

acted merely on receipt of instructions from the Deputy Inspector-General of Police in the Criminal Investigation Department, Burma, and the order of detention was clearly automatic.

We have no materials before us from which we can decide—and therefore we must not be taken to have decided—on the merits of the order of detention: It is sufficient for the purpose of this case to say that the order of detention, not having been made in the exercise of discretion vested in the officer who passed it, must be set aside.

Maung Wan Maung will therefore be set at liberty so far as his detention is under Detention Order No. 67 of 1947 of the 17th October 1947 issued from the office of the Deputy Commissioner, Shwebo.

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