

SUPREME COURT.

WON SHWE BEE (APPLICANT)

v.

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

Aug. 2.

Directions in the nature of habeas corpus—Whether 2nd application is maintainable in Burma—Right of review when exerciseable.

Held : That according to English practice if an applicant fails to get a writ of *habeas corpus* issued or if having obtained it he fails on the return to get his discharge, he can apply one after the other to the other Judges of the same Court or to the other Courts having jurisdiction to deal with it on precisely the same grounds.

The Rev. James Bell Cox v. James Hakes and one, L.R. 15 A.C. 506 ; *Eshubgayi Eleko v. Officer Administering the Government of Nigeria and another*, (1928) A.C. 459, followed.

But the Supreme Court of the Union of Burma is the only Court which has jurisdiction to deal with the issue of directions in the nature of various writs under Article 25 of the Constitution. The Court under the Union Judiciary Act and the rules framed thereunder always sit *in banco*. Therefore no 2nd application for direction in the nature of *habeas corpus* lies in Burma.

The right of review like the right of appeal is a creature of the statute and there is no statute giving a right of review in respect of the judgment of the Supreme Court.

U Htwe (a) A. E. Madari v. U Tun Ohn and one, (1948) B.L.R. S.C. 541, referred to.

L. Lin Su for the applicant.

Ba Sein (Government Advocate) for the respondents.

The judgment of the Court was delivered by the Chief Justice of the Union

SIR BA U.—This is the 2nd application made on behalf of the *detenu* Chow Ho Sou, for a writ of *habeas corpus*. Chow Ho Sou was arrested at the marine base on the 4th April 1949 when he was about to board a plane bound for Hongkong. When

* Criminal Misc. Application No. 186 of 1949.

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

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a search was made, some letters indicating him as a link between the Communists in Burma and the Communists in China were found. Since the date of his arrest he has been kept under detention under the orders of the Commissioner of Police passed under section 5A (1)(b) of the Public Order (Preservation) Act. Three days after his arrest and detention an application for *habeas corpus* was made on his behalf. It was dismissed after a full enquiry into the causes of his detention and the legality of the detention order.

The ground put forward in support of the present application is that new facts have now been discovered and that if these facts had been available at the time of the 1st application the result of that application would have been different.

The question that, therefore, arises is whether a 2nd application lies, whether on the same facts or on new facts after the 1st application has been dismissed on merits.

In *U Htwé's* case (1) this Court observed :

“The writs as set out in Article 25 of the Constitution are borrowed from English Law, and they should, therefore, consistently with our Constitution, be used in the same way as they are used in English Law.”

In English Law, if the applicant fails to get a writ of *habeas corpus* issued or if, having obtained it, he fails on the return to get his discharge, he can apply one after the other to the other Judges of the same Court or to other Courts having jurisdiction to deal with it on precisely the same grounds. [Cf. *The Rev. James Bell Cox v. James Hakes and one* (2) and *Eshugbayi Eleko v. Officer Administering the Government of Nigeria and another* (3)].

(1) (1948) B.L.R. 541.

(2) L.R. 15 A.C. 506.

(3) (1928) A.C. 459.

The reason why the same Judge or the same Court cannot entertain a 2nd application in respect of the same subject-matter is because the Court becomes *functus officio* after it has passed an order of judgment thereon. The same principle is to be found in the criminal law of this country.

Though in England successive applications to the Judges of the same Court or to different Courts can be made, one after the other, the same cannot be done in this country. This Court is the only Court which has jurisdiction to deal with the issue of the various writs mentioned in Article 25 of the Constitution and this Court under the Union Judiciary Act and the rules framed thereunder always sits in *banco*.

A 2nd application cannot also be treated as an application for review because the right of review, just like the right of appeal, is a creature of statute and and there is no statute giving a right of review.

The application stands dismissed.

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