

RAJYA SABHA

(1966)

Point of privilege

Alleged incorrect information furnished to the House about the arrest of the two members by a magistrate and alleged wrong statement made in the House by a Minister about their arrest

Facts of the case and ruling by the Chairman

On the 23rd November, 1966, Sarvashri Gaure Murahari and Raj Narain, members, sought to raise a question of privilege against Shri Y. B. Chavan the Minister of Home Affairs, for making a wrong statement in the House regarding their arrest and against the Sub-Divisional Magistrate, New Delhi, for furnishing incorrect information to the House about their arrest. Shri Gaure Murahari stated that on the 21st November, 1966, in reply to a question Shri. Chavan had informed the House that as Shri Murahari and Shri Raj Narain were in Judicial custody, therefore, he could not make a statement in the House about their arrest. Shri Murahari contended that in fact they were not in Judicial custody but were remanded by the magistrate and that the statement of the Minister of Home Affairs was incorrect, and he had, thereby, committed a breach of privilege by misleading the House. Shri Murahari further contended that while the Sub-Divisional Magistrate in his communication to the House stated that the arrest was made under section 114 of the Criminal Procedure Code, he (the Sub-Divisional Magistrate) had not mentioned Section 107 and, therefore, had not confirmed to the requirement of the Constitution and Rules of Procedure of Rajya Sabha about the arrest of members.

2. Shri Raj Narain complained that there was no due compliance of law in the matter of his arrest and detention. He, further contended that the intimation sent by the Magistrate to the House about his arrest was misleading as it failed to give correct information.

3. The Chairman (Dr. Zakir Husain) observed that he would consider the matter after hearing the Minister of Home Affairs.

4. On the 25th November, 1966, the Minister of Home Affairs explained¹ the position as follows: -

"The facts are that the two hon. member were taken into custody on the basis of warrants issued by the Sub-Divisional Magistrate under section 114 Cr. P.C. after he had initiated proceedings under section 107 Cr.P.C. Proceedings under section 107 Cr.P.C. are judicial proceedings. They did not come to an end when remand was granted. When I made the statement in question, the Magistrate had not passed final orders in respect of the proceedings under section 107 Cr. P. C. drawn up against the hon. members. The proceedings were still pending in the Court. It was therefore, not considered proper to make any detailed statement on the subject here. There is no doubt that the hon. members had been remanded to custody in connection with judicial proceedings.

A point was also raised that the Magistrate had furnished incorrect information. Sir you have all the communications sent by the Magistrate and will decide whether there has been any default. If need be, for your information, I will send the records of the Magistrate. I am only pointing out that warrants of arrest in connection with proceedings under section 107 Cr.P.C. are issued under section 114 Cr. P.C.

There are various other allegations which try to make out that the Government had acted mala fide in connection with a judicial proceeding, and the Magistrate had not acted according to law. These are matters for which remedies can appropriately be sought only in a competent court of law."

5. The Chairman reserved his ruling.

6. On the 5th December, 1966, the Chairman observed², inter alia as follows :-

"The Home Minister, in his statement on November 25, 1966. clarified his earlier statement regarding judicial custody. On the facts before me, and from the communications of the Sub-Divisional Magistrate regarding the arrest of the two members, which I reported to the House, the fact of the two members having been placed in judicial custody does not appear to be in doubt. In fact, the communications from the Sub-Divisional Magistrate clearly stated that the two members were in judicial custody. There is therefore, no case of breach of privilege against the Home Minister.....

....The intimation sent to me by the Magistrate clearly stated the reason for which Shri Gaure Murahari had been arrested, and also the section of the Criminal Procedure Code, namely, section 114, under which the arrest had been made. The mere omission to refer to section 107 in the communication will not itself, amount to a breach of privilege when the reason for the arrest had been clearly stated in the communication. I, therefore, hold that on this point also there is no breach of privilege involved.

....It is well established that the members of Parliament enjoy no privilege of freedom from arrest in criminal proceedings. The allegations contained in Shri Rajnarain's notice as to the failure on the part of the magistrate to comply with the provisions of the law are matters which can be tested only in a court of law in appropriate proceedings. On the basis of the principle to which I have already referred, there cannot arise a question of breach of privilege in the matter of arrest and detention of a member under the Criminal Law. In this connection, I would like to point out that the Sub-Divisional Magistrate himself apologised for incomplete information supplied by him to me in his first communication relating to the arrest of Shri Rajnarain, and he took the earliest opportunity to put the House in possession of full factual information. I, therefore, hold that no breach of privilege is involved in Shri Rajnarain's complaint also.

Members of Parliament enjoy certain privileges and immunities conferred on them under the Constitution to enable them to perform their duties as such members without fear or favour and without any impediment or obstruction placed in their way in the due discharge of such duties. One such privilege is freedom from arrest when

parliament is in session. This privilege of freedom from arrest is limited only to civil causes, and has not been allowed to interfere with the administration of criminal justice or laws relating to preventive detention. Thus, during a session of Parliament, the privilege of freedom from arrest does not extend to arrest under criminal process. This, however, should place a special responsibility on the authorities to ensure that, in taking action for arrest or detention of a member at a time when Parliament is in session, they show the utmost regard to the procedure established by law, so that a Member may not have legitimate cause for complaint or grievance that he has been arrested or detained without strict compliance with the process of law and thereby illegally prevented from performing his parliamentary duties.

Although the privilege of freedom from arrest does not extend to criminal proceedings, it is the right of the House to receive immediate information of the arrest, imprisonment or detention of any member with the reasons therefor. The failure on the part of the authorities to give such information may amount to a breach of privilege. Thus, in all cases in which a member of a House of Parliament is arrested on a criminal charge or for a criminal offence, or is sentenced or imprisoned by a court or detained under an executive order, the concerned authorities must immediately intimate such fact to the Presiding Officer stating clearly the reason for the arrest, detention or conviction as also the place of detention or imprisonment of the member. I understand that the Government have issued instructions, to all concerned drawing their attention to this requirement. Experience, however, has shown that in some cases the intimation is not sent promptly and does not contain all the material particulars. I would ask the Government to impress upon all concerned that there should be no lapse in this respect."

1. R.S. Deb., dt. 25.11.1966

2. Ibid, dt. 5.12.1966