RAJYA SABHA

(1967)

Point of privilege

Alleged mala fide arrest and subsequent release on bail of a member

Facts of the case and reference to the Committee of Privileges

On the 7th April, 1967, Shri Rajnarain, a member raised[1] a question of privilege on the ground that on the 6th April, 1967 he was arrested at Lucknow on a warrant with entries thereon mani pulated and without the signatures of the magistrate or of the court peshkar and without the seal of the court. He alleged that his arrest was mala fide and constituted a breach of privilege although he was subsequently released on bail.

2. The Chairman (Shri V.V. Giri), after hearing Shri Rajnarain and some other members and perusing the warrant furnished by Shri Rajnarain alongwith his notice of privilege, observed :

> "I think the arrest was made on a warrant which appears prima facie to be a very, very doubtful document and so the matter should be referred to the Privileges Committee with the request that they should submit their report before the end of the next session."

Findings and recommendations of the Committee

3. The Committee of Privileges, after calling for facts and further clarifications from the Government of Uttar Pradesh, in their Eleventh Report presented to the House on the 14th August, 1967, reported inter alia as follows :

(i) "On a perusal of the original warrant, it was seen that its back portion had been scored off, but the date '18th March, 1967' which had been entered there as the (late of hearing had been cut, and in its place the date '13th April, 1967' inserted. Neither this change in the date nor the scoring off of the back portion of the warrant bore any initial or signature of the person who had made these entries. Shri Rajnarain had contended in his submission before the House that the change of date from 18th March, 1967 to 13th April, 1967 was without authority, and therefore, his arrest was illegal and mala fide.

The magistrate in his letter dated the 5th June, 1967 has explained the change thus :

'So far as the question of change of the date from 18th March to 13th April is concerned the photostat copy of the warrant shows that warrant was prepared on 13-3-67 for 18-3-67. It appears that it

1. R.S.Deb. dt.7.4.1967, cc.2775-90

could not be sent in due time for execution. When on 18-3-67 the same order of issue of warrant was repeated, instead of preparing the fresh warrant the same warrant was utilised with a change in date for 13-4-67, the next date fixed in the case and was sent for execution. There is no specific order for change of date in that very warrant on the file. The correct position could be given only by Ahalmad concerned who is on leave.'

It may be convenient at this stage to refer to the legal position in regard to a warrant of arrest. Under sub-section (1) of section 75 of the Criminal Procedure Code, 1898, every warrant of arrest issued by a court shall be in writing, signed by the Presiding Officer, or in the case of a bench of magistrates, by any member of such bench; and shall bear the seal of the court. Under sub-section (2) of the said section, every such warrant shall remain in force until it is cancelled by the court which issued it, or until it is executed. The warrant in the present case does contain the signature of the magistrate and the seal of the court on the front portion. The back portion of this warrant does not really have any relevance in the present case, as the warrant is a non-bailable warrant. The fact, however, remains that a date was given on the back portion and this date was subsequently changed. The entire suspicion of mala fide in the present case arose be cause of the insertion of these dates and because such insertions did not bear any initial or signature of the person making it.

Shri Rajnarain had contended that since no arrest had been effected before 18th March, 1967, the warrant had expired, and the change of date from 18th March, 1967 to 13th April, 1967 was made without authority to illegally arrest him on April, 6, 1967. it is quite clear from the warrant that it had not been cancelled at the time of Shri Rajnarain's arrest on April 6, 1967. III other words, at the time of the arrest the warrant was in force and therefore, under the provisions contained in sub-section (2) of section 75 of the Criminal Procedure Code, to which reference has already been made, it cannot be held that Shri Rajnarain's arrest was illegal. This view is also supported by the case reported in Cr. L.J. of May, 1967-page 574 (Indra Mandal & Others, Petitioners Vs. The State of Bihar, Respondent-A.I.R. 1967 Patna' 14 1).

(ii) "Shri Rajnarain had also contended in, his notice of privilege-and had subsequently repeated in the House-that there was an announcement by the then Chief Minister of Uttar Pradesh (Shri C.B. Gupta) in the U.P. Legislative Assembly to the effect that the cases connected with the 'Ghera Dalo' movement would be withdrawn and that his arrest on April 6, 1967, was pursuant to a conspiracy of the police' officers for 'defaming the first non-Congress Ministry'.

From the explanation furnished by the Government of Uttar Pradesh, it would appear that the decision to withdraw cases pertaining to those like Shri Rajnarain's was taken only subsequent to Shri Rajnarain's arrest, and not prior to his arrest. From the order sheet of the magistrate, it would be seen that on 18-4-1967 at the request of the prosecution, the case was adjourned for an indefinite period and the warrants against the accused persons withdrawn. Finally, on May 24, 1967, the case was actually withdrawn by the prosecution. In the light of these facts the Committee is satisfied that on this point also the charge of Shri Rajnarain cannot be sustained."

(iii) "On the facts set out above and having regard to the legal position, the Committee is of the opinion that Shri Rajnarain's arrest was neither illegal nor mala fide and therefore there is no breach of privilege involved in the case.

The Committee would, however, like to point out that there was ground for a reasonable apprehension in the mind of Shri Rajnarain that the action in arresting him on April 6, 1967 Was not bona fide. As the Committee has stated earlier, the confusion arose because of the entry and subsequent alteration of the dates on the back of the warrant without any signature or initial of the authority making the entries.

It is pertinent to point out that even the magistrate has not been able to give a satisfactory explanation on this point. The Committee has already observed that the warrant being a non-bailable warrant it was unnecessary to make any entry on the back portion thereof. The back portion had in fact been rightly scored off. If it is the practice in the U.P. courts to give the next date on the back of a non-bailable warrant, it would seem desirable that any alteration therein should be duly signed by the authority making the alteration. If only this had been done in the present case, this complaint of breach of privilege would not probably have arisen."

(iv) "Another, unhappy feature of the present case was the extraordinary delay on the part of the U.P. Government in replying to the letters of the Rajya Sabha Secretariat and furnishing information. This resulted in the Committee having to seek the indulgence of the Rajya Sabha to extend the time for the presentation of the Committee's report. It does not need to be emphasized that the State Governments, like anybody else, owe a duty to Parliament and its Committees to respond promptly when communications are addressed to them asking for information."

(v) "In the view taken by the Committee that there is no breach of privilege involved in the complaint of Shri Rajnarain, the Committee would recommend to the House that no action is called for in the matter."

Action taken by the House

5. No further action was taken by the House in the matter.