

## ARREST OF THREE MEMBERS

**Mr. Deputy-Speaker:** I have received notice of another motion from Shrimati Sucheta Kripalani, Shri S. S. More and Shri Ramachandra Reddi regarding:

"the arrest and continued detention of three prominent Members of the House belonging to the opposition without their being produced before a Magistrate within twenty-four hours which has produced a tense political situation charged with communal bitterness in Delhi and several other parts of the country."

There is another motion notice of which has been given by Dr. Krishna-swami, and also some others relating to the same matter. I shall first dispose of this one and consider the others later. I shall see whether they are barred or whether they raise any special matter. I shall take them up later.

**The Minister of Home Affairs and States (Dr. Katju):** There are several objections to this motion. In so far as the detention of these three hon. Members of this House is concerned and the question raised that they were not produced before a magistrate, I have just been informed that an application has been filed in the Supreme Court for a writ of *habeas corpus*. The Supreme Court has entertained that application and has fixed tomorrow for the disposal of that application. Therefore, this particular matter, namely, whether these detentions are valid or invalid, will now be the subject matter of judicial process and should not be discussed in this House.

In regard to the second matter, Sir, you have just now been pleased to read a letter from the District Magistrate of Delhi informing you that the detention of these hon. colleagues of ours is under Section 188 of the Indian Penal Code. Now I understand that a regular complaint has been filed and the matter is again the subject of judicial process. Under these circumstances, I submit that it would not be proper, nor would it be permissible under the rules, to have a discussion in this House while a criminal case is pending.

So far as the general situation in Delhi is concerned, the position is like this. An order was made by the executive authorities prohibiting certain processions and meetings. That law according to those authorities was openly defied and judicial proceedings are

now pending. Whether communal bitterness has increased has nothing to do with this matter. The law must be enforced. Therefore, on all these grounds, I submit that the adjournment motion is not in order.

**Shri Raghunath Singh (Banaras Distt.—Central):** Was any bail application moved on behalf of the accused?

**Dr. Katju:** Not to my knowledge. Personally I would have been glad if it had been moved and very likely the authorities would have agreed to the magistrate making the bail order.

**Shri R. K. Chaudhury (Gauhati):** May I respectfully enquire, apart from the question of adjournment motion, or of a judicial or any other enquiry, whether as a matter of fact these three hon. Members were produced before a Magistrate or not? We have a written statement from these three gentlemen before you as against a Press report. We would like to know whether as a matter of fact they were produced before a Magistrate or not.

3 P.M.

**Dr. Katju:** The answer will have to be given tomorrow in the Supreme Court, but I shall certainly make enquiries.

**Shri R. K. Chaudhury:** The Speaker is supreme in this matter. He has every right to know whether an hon. Member who has been arrested has been produced before a Magistrate or not.

**Shri S. S. More:** I happen to be one of the signatories to this. Of course, I have heard patiently the points raised by the Minister of Home Affairs. I want to make this submission. I want to know whether these three M.Ps. were produced before a Magistrate in accordance with the provisions of article 22. I do not know on which particular point the matter is being agitated in the Supreme Court. There may be so many points. Has each one of the points been submitted to the Supreme Court? That is relevant. Simply a broad statement that the matter has been taken to the Supreme Court cannot stop a discussion of the matter in this House.

Another point I would like to raise and that is that you may defer your decision for some time. Let the relevant papers be produced by the Ministry in charge of this particular matter in this House; then only we can see whether the discussion on this matter is likely to tread upon the jurisdiction of the Supreme Court or the particular law court

in which the complaint has been filed. Unless we know the limits of the discussion here and the limits of the particular points which are going to be agitated on the floor of the Supreme Court or the particular magisterial court, merely saying that this matter is *sub judice* is too broad and vague a statement which should not be allowed to stand on its limping leg in this House.

**Mr. Deputy-Speaker:** I have heard both sides. It is rather unfortunate that the proceedings regarding the Members of the House should have resulted in this. But I am only concerned with the question of privilege. If there is a question of breach of privilege, it is a different matter. But so far as the question of production before a magistrate is concerned after arrest, that is not a matter I think which this House can go into, after once the arrest is proper. We cannot go on pursuing from stage to stage whether legally the various points of procedure have been followed or not. When an hon. Member breaks law and order it is open to the Government, in the maintenance of law and order, to arrest him. I understand that regular proceedings under the Indian Penal Code have been launched, and a complaint has also been lodged under section 188. The matter is now *sub judice*. Even otherwise, when once an arrest is made, even if he is a Member of Parliament, all that we are entitled to is that the House should be informed through the Speaker as soon as an arrest is made, an arrest of a sitting Member of Parliament while Parliament is in session. The privilege is to have the advantage of hearing the Member. That is all. We cannot go into the details. Information has been given to us even before the proceedings and the adjournment motion has been placed. I read the letter from the District Magistrate. What follows subsequently hereafter, if some error of law has been committed, we cannot sit in judgment. There is the court, there is the Supreme Court, an equally important organ to safeguard the fundamental rights and interests of citizens. Under these circumstances, I feel, notwithstanding whether there is a case for pursuing this matter or not, this House cannot go into further details as to whether they have to be produced or have been produced before a Magistrate or not.

Even apart from that, this is a matter where under section 188 it is open to say that the order is illegal. Further, it is said that a writ for

*habeas corpus* has been filed before the Supreme Court. Whether this is one of the grounds or not, all these matters can be raised, and if the detention is illegal any Member who appears before the court is entitled to get his release.

Therefore, now that the matter is in the hands of two courts I do not think it is proper for us to interfere. I would only refer hon. Members who have tabled the motion to sub-rule (vii) of Rule 62:

"The motion shall not deal with any matter which is under adjudication by a Court of Law having jurisdiction in any part of India."

The moment a complaint is filed or a petition is launched invoking the jurisdiction of any of the courts, the courts are seized of the matter, and to that extent the jurisdiction of this House is barred.

Regarding the point made by Mr. Rohini Kumar Chaudhuri that I must send for the papers, with all respect to him, I feel it is not within the province of the Speaker or the House. After the arrest, so long as the arrest is proper and duly intimated to the House, the law must take care of itself. So far as the hon. Members who suffer, under that are concerned, if there is any illegality committed, there are the courts to set right those matters.

**Shrimati Sucheta Kripalani** (New Delhi): I have a submission to make. You said that we cannot pursue the matter stage by stage. In the present case these are not ordinary citizens; they are Members of Parliament. There is a fear that executive interference may prevent these people from fulfilling their obligations to the House. Therefore, I submit that the House has a right to follow it stage by stage.

**Mr. Deputy-Speaker:** I have deeply considered this matter—with all respect to the hon. lady Member and Leader of the Party who has also joined in tabling the motion. It is not within the province of the House to see stage by stage whether any irregularity is committed. We cannot usurp the functions of the courts of law. It is true that the persons against whom proceedings are started are Members, and prominent Members, of the House. All the same, I regret my inability to pursue this matter stage by stage. We cannot be a super-court to the Supreme Court established under the Constitution. I do not think this House,

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or much less myself, can arrogate to ourselves the powers given to the Supreme Court under the Constitution.

**Shri Vallatharas (Pudukkottai):** May I seek information on a particular point? It is an important point.

**Mr. Deputy-Speaker:** Order, order. While I am on my feet no hon. Member should stand up.

This matter is disposed of. I do not think I can give my consent to this motion. I shall take up another matter.

**Shri Vallatharas:** The House must know the basis, whether it is arrest and remand or detention.

**Mr. Deputy-Speaker:** The hon. Member is a lawyer. And he has heard so far. It is unnecessary to raise the question. It is not a detention. The hon. Minister has said there has been a violation under section 188 of the Indian Penal Code. That means violation of an order promulgated in due course of law by a Magistrate. Any contravention of a lawful order passed comes within the pale of section 188. And a case has been filed. It is not a matter of detention. It has been expressly stated for fifteen minutes till the hon. Member starts once again.

**Shri Vallatharas rose—**

**Mr. Deputy-Speaker:** Let us not take up the time of the House unnecessarily.

#### BAN ON PROCESSIONS IN DELHI

**Mr. Deputy-Speaker:** I have received another adjournment motion in the name of Babu Ramnarayan Singh, Dr. A. Krishnaswami and Kumari Annie Mascarene—I think the hon. Minister must have got a copy of it—to discuss:

“The tense situation in different parts of the country consequent on the issue of a prohibitory order banning processions in Delhi on March 6th at the instance of or with the knowledge of the Government of India, such order having been re-imposed within twenty-four hours of revoking a previous prohibitory order misleading the public to believe that such imposition of orders will not be continued and imposing it further without adequate notice and without showing the courtesy of informing responsible leaders and Members of Parliament who had announced that they would lead such processions”.

*Prima facie* it is out of order. There is an Assembly and there are a set of Ministers who are in charge of law and order in the State of Delhi. I would like to know how this is in order.

**Dr. Krishnaswami (Kancheepuram):** The hon. the Home Minister, in answer to a question by Pandit Hirday Nath Kunzru in another place, pointed out that it was his consent that was obtained before this Order was re-imposed.

**Mr. Deputy-Speaker:** That was only in an advisory capacity.

**Shri S. S. More:** Let the hon. Minister say it.

**Mr. Deputy-Speaker:** This is in the ordinary course of administration. This only shows—the promulgation of an order under section 144, the withdrawal of the order, and re-promulgation only shows—the cautious manner in which the authorities seem to have proceeded. Instead of continuing the ban for two months in the metropolis and trying to find out whether things will settle down and then withdrawing it, it seems much more attention has been brought to this matter. That is normally what any Magistrate would do under these circumstances.

**Shri V. G. Deshpande (Guna) rose—**

**Dr. N. B. Kharé (Gwalior):** Is it not a fact that all Part C States' Police, including Delhi, are working under the direct supervision and orders of the Home Minister of the Government of India?

**Mr. Deputy-Speaker:** I know that in Part C States law and order is constantly being reviewed or supervised by the hon. Home Minister but the Administration cannot be expected to review or interfere with every order passed under section 144. No Government, under these circumstances, will be able to do this.

**Kumari Annie Mascarene (Trivandrum):** Section 144 is not mandatory but discretionary, and this is an indirect application of section 144.

**Mr. Deputy-Speaker:** I am glad.

**Shri S. S. More:** My submission is, for a Part C State the Home Minister of the Government of India is supposed to be the technical boss of the whole apparatus. It may not be possible for him to supervise every order but technically, legally and constitutionally.