

**(2003) 11 MAD CK 0125**

**Madras High Court**

**Case No:** H.C.M.P. No. 158 of 2003 in H.C.P. No. 1554 of 2003

Arcot. N. Veeraswamy

APPELLANT

Vs

The State of Tamil Nadu The  
Chief Secretary, Govt. of Tamil  
Nadu, The Speaker, Tamil Nadu  
Legislative Assembly and The  
Superintendent, Central Prison,  
Chennai

RESPONDENT

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**Date of Decision:** Nov. 13, 2003

**Citation:** (2004) 1 LW(Cri) 442

**Hon'ble Judges:** P. Shanmugam, J; A.K. Rajan, J

**Bench:** Division Bench

**Advocate:** Shanmugasundaram for Mr. S. Ravi, for the Appellant; N.R. Chandran,  
Advocate General and Mr. I. Subramanian, Public Prosecutor, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

1. In the H.C.P., Petitioner has prayed for the issue of a writ of Habeas Corpus calling for the records pertaining to the " Warrant of Commitment" issued by the second Respondent dated 7.11.2003. to set aside the same, direct the Respondents to produce the detenu Thiru. Parithi Ilamvazhuthi, now confined in the Central Prison, Chennai, before this Court and set him at liberty.

2. In the II.CM.P. , Petitioner had sought for an interim relief of suspension to the sentence and to release the detenu on bail pending disposal of the main Habeas Corpus Petition.

3. The Petition is filed by the treasurer of the D.M.K. party and sitting M.L.A., on behalf of the detenu, Thiru, Parithi Ilamvazhuthi, a member of their party and a sitting M.L.A. of the Tamil Nadu Legislative Assembly, hereinafter referred to as the detenu.

4. On the basis of an allegation that on 30.1.2003, during the budget session of the Tamil Nadu State Legislative Assembly, the detenu criminally intimidated one Thiru, Kumaradoss, M.L.A. belonging to the A.I.A.D.M.K. Party and attempted to cause his death inside the Assembly, a resolution was moved and passed to the effect that the incident be referred for enquiry by the Committee on privileges of the Tamil Nadu Legislative Assembly. On being summoned by the committee, the detenu submitted his representation on 19.7.2003. Thereafter, a report by the committee on privileges appears to have been placed before the assembly on 7.11.2003 and without any further opportunity to the detenu on the quantum of sentence to be imposed on him, a resolution was passed on the same day, i.e. 7.11.2003 and the warrant of commitment was issued by the second Respondent, as a result of which the detenu was arrested in the lobby of the assembly and committed to the Central Prison, Chennai. The H.C.P. has been filed challenging this warrant of commitment passed by the second Respondent.

5. Mr. Shanmugasundaram, learned senior counsel appearing on behalf of the Petitioner submitted that the impugned order of detention is illegal and has been made in violation of the mandatory legal requirement contemplated u/s 235 (2) of the code of criminal procedure read with Article 21 of the constitution of India. According to him, the lodging of the detenu in the Central Prison, Chennai without producing him before the Magistrate is a breach of the provisions of Article 22(2) of the constitution. His further submission is that the whole proceedings are in violation of Article 20(2) of the Constitution inasmuch as on the same set of facts, the criminal case has been registered against the detenu and after having been in custody for 11 days in that case, he was released on bail. On the above submissions, by referring to the discussion of the Supreme Court as well as our High Court, learned senior Counsel contents that a case has been made out for the grant of bail to the detenu and prays for bail pending in the H.C.P.

6. Mr. N.R. Chandran, learned Advocate General appearing on behalf of the Respondents 1, 3 and 4, submits that the matter raises a constitutional question on the privileges of the State Legislature and that Supreme Court has already referred the matter for consideration, and therefore, the detention is not illegal. According to him the H.C.P. filed without challenging the Resolution, based on which the order of detention has been passed, is not maintainable. He further submits that no personal hearing need be granted in view of the decision of the Full Bench of the Court in *a.m. Paulraj v. The Speaker, Tamil Nadu Legislative Assembly* (A.I.R. 1986 Mad 248). According to him, since the detenu has been arrested and sent to Prison on the basis of a conviction, there is no need to produce him before the Magistrate. He further submits that there is no question of double Jeopardy in this case. Since the issue before the Assembly is entirely different from the one before the Criminal Court. He, therefore, submits that the main matter itself can be considered and hence, no bail need be granted.

7. We have carefully considered the submissions made on the either side.

8. The Warrant of Commitment refers to the Resolution of the State Legislative Assembly on the breach of privilege committed by the detenu and states that the detenu be sentenced to simple imprisonment for a term of 30 days. However, no copy of the said resolution is forwarded along with the Warrant of Commitment. Therefore, the detenu has no other alternative except to challenge the Warrant of commitment on the grounds raised in the H.C.P.

9, A Constitution Bench of the Supreme Court, in *In re, Under Article 143* [In the matter of: Under Article 143 of the Constitution of India](#), while answering question referred to it, has held that while challenging the legality of the sentence of imprisonment imposed by Legislative Assembly for the infringement of which privileges, the High Court is competent to pass on order, releasing the detenu on bail pending disposal of his writ petition. Distinguishing the English Case Law, it was held in the above case that the right to move the Supreme Court under Article 32 the High Court under Article 226 of the Constitution cannot be taken away. A Division Bench of this Court, in *O.S. Manian, in the matter of the detenu R. Thamaraikkani* (2001(1) L.W. (cri.) 155), has held that H.C.P. is maintainable on the Warrant of Arrest and that the order of detention could be challenged under Article 226 of the Constitution.

10. As the learned Advocate General finally conceded, the issue as to whether the Court has got jurisdiction over the Law made by a Legislature as per Article 212 of the Constitution is an important Constitutional question and hence, we are of the view that the matter requires consideration. Therefore, we are satisfied that the arrest made on the basis of the resolution of the State Assembly, which is said to be in violation of the rights guaranteed under Article 20(2) 21 and 22 (2) of the the Constitution, can be challenged on the same premises.

11. In *Santa Singh v. the State of Punjab* (1976 S.C.C.(cri.)546), the Supreme Court has held that the provision in Section 235(2) of the Code Criminal Procedure is in consonance with the modern trends in Penology and sentencing Procedure. In *Anbazhagan K. etc. v. The Secretary, Tamil Nadu Legislative Assembly* (1987 W.L.R. 568), a Division Bench of this Court has held that a matter arising out of a breach of privilege exclusively within the jurisdiction of the Legislature and Article 212 forecloses any scrutiny by the Court. In that case, the Division Bench did not go into the question of the protection guaranteed under Article 21 of the Constitution and as to whether the failure to follow a fair procedure to give an opportunity to the detenu is deprivation of his guaranteed right.

12. A Full Bench of this Court, in *a.m. Paulraj v. The Speaker, Tamil Nadu Legislative Assembly* (A.I.R. 1986 Mad 248), has held that the challenge to a committal order passed on the ground of breach of privilege can be questioned as violating Article 21 of the Constitution and the petition cannot be thrown out at the threshold.

However, the Full Bench has also held that a decision taken without hearing cannot be challenged on the ground of irregularity or violation of the right guaranteed under Article 21 of the Constitution. Their Lordship have referred to Assembly Rule 255 framed under Article 208 (1) of the Constitution, which enables a Member to give notice of an Amendment or as to the mentioning of a matter for consideration etc. In the case, the Amendment moved in the Assembly was withdrawn and therefore, it was held that the decision of the Legislature cannot be questioned by virtue of Article 212 (1) of the Constitution. But, as referred to earlier, the very issue has now been referred for a decision by the Supreme Court.

13. The Basic issue of Fundamental Right v. the Legislative privilege is to be resolved. In the absence of codification on the procedure and the measure of punishment, they have to conform to reasonableness. The Paramountcy of the liberty of a citizen is the undercurrent of the various provisions of the Constitution, especially Part III. Besides, from the facts of this case, it is seen that the detenu had been in pre-trial custody for 7 days in reference to the Criminal Case filed against him and he was also suspended from attending the entire Budget Session of the House. The detenu did not have the opportunity to place these and other mitigating or special circumstances ,including his physical condition, which have a bearing on the quantum of sentence imposed on him. This, in our view violates the principles of natural justice.

14. For all these reasons ,we hold that the detenu is entitled to be released on bail pending disposal of the Habeas Corpus Petition.

15. We accordingly suspend the sentence imposed on the detenu pending disposal of the H.C.P. and direct that the detenu be released forthwith on his furnishing a bond for a sum of Rs. 10,000/- (Rupees Ten Thousand Only) with two sureties for a similar sum each, to the satisfaction of the XVI Metropolitan Magistrate, George Town, Chennai-1.