Law and lawmakers

SC is right in saying legislative privilege cannot be a cover for crimes in the House

The Supreme Court ruling that legislative privilege cannot be extended to provide legal immunity to criminal acts committed by lawmakers ought to be welcomed for two reasons. It lays down that legislators charged with unruly behaviour that results in offences under penal laws cannot be protected either by their privilege or their free speech rights. Second, the decision revivifies the law relating to a prosecutor's role in withdrawing an ongoing criminal case. The LDF government in Kerala has suffered a setback as it strongly favoured the withdrawal of cases against six members sought to be prosecuted for creating a ruckus in the Assembly on March 13, 2015, when they boisterously tried to interrupt the presentation of the Budget presented by the erstwhile UDF regime. Their action resulted in destruction or damage to some items, amounting to a loss of ₹2.20 lakh. Based on the Assembly Secretary's complaint, the police registered a case and later filed a charge sheet against them for committing mischief and trespass under the IPC and destroying public property under the Prevention of Damage to Public Property Act, 1984. This year, the Chief Judicial Magistrate, Thiruvananthapuram, had rejected the application by the public prosecutor for withdrawal from prosecution, an order that was later affirmed by the Kerala HC. It is not surprising that the apex court concurred with these decisions, as it is indeed an unacceptable argument that the alleged vandalism took place as part of the legislators' right to protest on the floor of the House.

Kerala CM Pinarayi Vijayan, who has rejected calls for asking his General Education Minister, V. Sivankutty, one of the accused, to resign and face trial, maintains that the matter ought to have been seen as a political protest and something that should not have been taken into the domain of criminal prosecution. He is indeed right when he says that courts ought not to re-appraise a prosecutor's decision to withdraw a case, and that they should only examine whether the prosecutor had applied his mind independently. However, there is equal force in the proposition that it is the court's duty to decide whether the withdrawal is in good faith, is in the interest of public policy, and is not aimed at thwarting the process of law. Legislative privilege and parliamentary free speech are necessary elements of a lawmaker's freedom to function, but it is difficult to disagree with the Court's conclusion that an alleged act of destroying public property within the House cannot be considered "essential" for their legislative functions. It is indeed quite legal for Mr. Sivankutty to remain in office, as he is yet to be convicted. However, he will be well-advised to take a cue from several recent precedents of those in ministerial positions stepping down until their names are cleared by due process.