

Nimba and ors. Vs. State of Mysore

Nimba and ors. Vs. State of Mysore

SooperKanoon Citation : sooperkanoon.com/372440

Court : Karnataka

Decided On : Feb-02-1955

Reported in : AIR1955Kant112; AIR1955Mys112; 1955CriLJ1083

Judge : Padmanabhiah, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 340

Appeal No. : Criminal Revn. Petn. No. 1 of 1955

Appellant : Nimba and ors.

Respondent : State of Mysore

Advocate for Def. : Asst. Adv. General

Advocate for Pet/Ap. : D.M. Chandrashekar, Adv.

Judgement :

ORDER

1. This is a Revision Petition preferred by the Petitioners-Accused against the order of the learned Special Second Magistrate, Shimoga, in C.C. 545/54, refusing permission to their Advocate Sri Bhavani shankara Rao to appear for and defend them.

2. The facts that have given rise to this petition are briefly as follows : The Petitioners are under-trial prisoners in C.C. No. 545/54 on the file of the learned

Special Second Magistrate, Shimoga. At a late stage of the enquiry, the Petitioners wanted to engage Sri Bhavani shankara Rao as their counsel to defend them in the case. The said Sri Bhavani shankara Rao was examined as P.W. 58 in the case for the prosecution. Therefore he filed an application to the learned Magistrate praying for permission to allow him to appear for and defend the accused. The learned Magistrate refused the said permission on the ground that as Sri Bhavani shankara Rao had been examined as a witness for the prosecution, it was not desirable to permit him to defend the accused. It is against this order that this Revision Petition is filed.

3. I am of opinion that the order of the learned Magistrate cannot be sustained. There is no rule of law that an Advocate who has appeared as a witness for the prosecution in a particular case should not appear or be allowed to appear for the accused in that case. If this proposition is accepted, it may lead to very serious and unexpected consequences, because the prosecution, if they so desire to deprive an accused of the services of an Advocate (whom he wants to defend), may cite him as a witness for the prosecution and examine him and thus deny the accused the services of the concerned Advocate. It is an inherent right of an accused to have a counsel of his own choice. No doubt it has also to be conceded that Courts have got an inherent power to refuse permission to a counsel or to require him to withdraw from a particular case. What the Courts have to consider in such cases is whether the trial would be embarrassed by permitting an Advocate to appear for the accused. If the Court comes to that conclusion, then permission should be refused; if not permission should be granted.

4. In this case, it is true that Sri Bhavani shankara Rao has been examined as a witness for the prosecution. He has been examined as P.W. 58. Further a copy of his deposition has also been filed. A perusal of his deposition goes to show that he is not a witness for the occurrence. He has sworn to some litigation between some of the witnesses that have been examined in the case. I do not know how his giving such evidence would embarrass the trial. This aspect of the case has not been considered by the learned Magistrate, nor has he given a finding to that effect.

5. A case reported in -- 'Emperor v. Dadu Ram', AIR 1939 Bom 150 (A), was cited before the learned Magistrate and that case seems to support the contention urged on the side of the petitioners. The learned Magistrate has attempted to distinguish that case on facts. Whatever it may be, the principle enunciated in that decision may be made applicable to the facts of the present case. The principles propounded in the course of this order are fully supported by the decision referred to above. The learned Assistant Advocate General rightly conceded the correctness of the proposition of law laid down in that case. I am of opinion that, under these circumstances, the order of the learned Magistrate cannot be supported.

6. In the result, the order of the learned Magistrate refusing permission to Sri Bhavani shankara Rao to appear for the accused is set aside, and this Revision Petition is allowed.

7. Revision allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com