

In Re: Vemureddi Babureddi

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SooperKanoon Citation : sooperkanoon.com/774844

Court : Chennai

Decided On : Apr-01-1921

Reported in : AIR1921Mad424; (1921)41MLJ158

Appellant : In Re: Vemureddi Babureddi; In Re: F.T. Ward, Pleader for Vemureddi Babureddi

Respondent : ;

Judgement :

ORDER

1. These are applications put in by Mr. F.T. Ward, a first Grade Pleader of Nellore and by his client the 1st accused in a murder case, under Section 107 of the Government of India Act and Section 435 Criminal Procedure Code, to set aside an order of the 2nd class Magistrate of Kovur debarring Mr. Ward from appearing as Counsel for the 1st accused at the preliminary inquiry on the ground that his name appears in, a supplemental list of witnesses put in by the prosecution as 42nd witness for the prosecution. Such an order is wholly unprecedented and is not supported by any of the cases referred to in the order. The Magistrate states that as a prosecution witness Mr. Ward cannot sit in Court on the accused's behalf until he is called in for examination in due order by the prosecution. The rule as to the exclusion of witnesses from Court until they have been examined is not without exceptions. It does not extend to the parties themselves in civil cases so long as they conduct themselves properly, or to their solicitors whose assistance is necessary for the proper conduct of the case. Roscoe's Nisi Prius Vol. 1 page 159,

18th Edn. The same rule applies in Criminal Cases: Roscoe's Criminal Evidence page 114, 13th Edn; and it has never been suggested that the fact that in England the accused is now a competent witness justifies his exclusion from the court during the trial. There are even stronger reasons for not applying the rule to the Counsel of the parties who have to conduct the case and this is apparently the first case of its application to them which has come before a superior Court.

2. In our opinion the rule does not apply to Counsel either in England or in India and further it would not be easy to reconcile its application to them with the provisions of Section 340 Criminal Procedure Code. The Bar Council has no doubt laid down for the guidance of the profession certain rules as to refusing retainers or withdrawing from the case where they are summoned as witnesses. See *Weston and Others v. Peary Mohan Dass* (1913) I.L.R. 40 Cal. 898 But there is nothing in those rules to suggest that circumstances which may make it desirable for a counsel not to appear render his appearance illegal. On the contrary the rules in question are for the guidance of Counsel in the exercise of their legal right to appear or refuse to appear. It might be otherwise if by appearing in a case a counsel became incompetent to be a witness. It is however now well-settled that there is no such incompetency, as held by Woodroffe in the case cited on the authority of *Cobbett v. Hudson* I.L.R. (1913) Cal. 898 and *Corea v. Peiris* (1852) I.E. & B 11 where a counsel in the case gave evidence and no objection was taken to the propriety of his so doing in the particular circumstances of that case.

3. Further it cannot be said at the present stage of the case and on the materials before us that there are circumstances which make it desirable that Mr. Ward should retire from the case. It is not suggested that he knows anything about the alleged murder itself. All that is suggested is that he acted for the 1st accused in certain civil matters which may have afforded a motive for the crime; and even as to these matters as pointed out by the Public Prosecutor, it may be open to him to plead privilege. The order of the Magistrate must be set aside.