

**In Re: Venugopal Mudaliar**

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**SooperKanoon Citation :** [sooperkanoon.com/793528](http://sooperkanoon.com/793528)

**Court :** Chennai

**Decided On :** Nov-08-1950

**Reported in :** AIR1952Mad509; (1951)IMLJ481

**Judge :** Somasundaram, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 526 and 540

**Appeal No. :** Criminal Misc. Petn. Nos. 2410, 2411 and 2412 of 1950

**Appellant :** In Re: Venugopal Mudaliar

**Advocate for Pet/Ap. :** V.M. Ramaswami Mudaliar and ;N. Gopalan Menon, Advs.

**Judgement :**

ORDER

**Somasundaram, J.**

1. This is an extraordinary application by one Venugopal Mudaliar who is cited as P. W. 1 in the chargesheet filed by the police in C. C. No. 5 of 1950 on the file of the Additional Sub Magistrate, Vellore.

2. The circumstances which have given rise to this petition are these : The petitioner complained to the police that one Thandavarayan who was employed under him & dismissed by him, entered into his house & abused & threatened to cause bodily injuries to two ladies by name Rukmani Ammal & Saradambal Ammal

who were said to be in occupation of the house at the time. The petitioner further alleges that he apprehended danger to his life & that of Rukmanl Ammal. The police after investigation has filed a charge-sheet against the accused in the case & as the petitioner is the informant he is cited as P. W. 1 in the charge sheet. The Assistant Public Prosecutor appears to be in charge of the prosecution. The petitioner has also engaged an advocate to assist the Assistant Public Prosecutor in the conduct of the prosecution.

3. On 4-10-1950 the advocate engaged by the petitioner presented a petition on behalf of the petitioner to strike out his name from the list of witnesses & to dispense with the examination of the petitioner as a witness in the case on the ground that the petitioner is not an eye-witness to the occurrence. Under what section of the Code of Criminal Procedure or the Evidence Act this petition is filed is not clear. Nor is it clear under what section of the Cri. p. C. the petitioner's advocate was permitted to interfere with the course & conduct of the prosecution which is in charge of the Assistant Public Prosecutor. However, strangely enough the Assistant Public Prosecutor himself inspired by the petitioner or his advocate (vide the allegations in para 5 of the petitioner's affidavit) filed a petition on 13-10-1950 similar to the one filed by the petitioner's advocate to dispense with the evidence of the petitioner herein. The Magistrate very properly questioned the right of the petitioner's advocate to appear in the case & finally allowed the petition of the Assistant Public Prosecutor to dispense with the evidence of the petitioner. The magistrate however seems to have decided to examine the petitioner as a court witness; and It is stated that he has Issued a warrant against the petitioner. It is this procedure of the Magistrate & the proceedings in issuing the warrant that are sought to be Questioned & quashed. The petitioner also seeks the transfer of this case from the file of the present magistrate to some other court.

4. It is contended by Mr. V. M. Ramaswami Mudaliar who appears on behalf of the petitioner that the prosecution has a right to pick & call its own witnesses & when it dispenses with a witness the court has no right to call that witness to come to court to give evidence. It is further contended that as the enquiry has not begun the court has no right to call the petitioner to give evidence before the prosecution lets in its evidence.

5. It is true that the prosecution cannot be compelled to call a witness given up by it. But it must not be forgotten that a duty is cast on the Public Prosecutor to place before the Court all material & important available evidence in the case. The first information in this case was given by the petitioner & it is stated to be in writing. The record is an important piece of evidence & the best way of proving it is by examining the person who gave the information. The petitioner being a person who gave the information, is a very important & material witness in the case. The prosecution would be failing in its duty if it does not examine such a person as its witness. The court can draw an adverse inference for the non-examination of such an important & material witness. However, in this case, very surprisingly the Assistant Public Prosecutor has thought fit not to examine such a witness & gave him up. I must say that the conduct of the Assistant Public Prosecutor in giving up the petitioner as a witness is highly improper & he deserves censure.

6. The Assistant Public Prosecutor having given up such an important & material witness, the only alternative is for the Court to examine him as a court witness. It is the duty of the court to call him & examine him as a court-witness. The magistrate has very rightly & properly called the petitioner to give evidence in the case. The discretion given to a court to examine any person as a court-witness is very wide; & in its discretion it can call a witness at any stage of the case. There is no restriction as to the stage at which a witness may be called by a court. The contention of the learned advocate for the petitioner that the court can call a witness only after the prosecution & the defence have closed their evidence is not warranted by the language of the section. As already stated, it is the duty of the Magistrate to examine the petitioner as a witness in the case; and the learned Magistrate was, therefore, perfectly justified in insisting on the petitioner coming to court to give evidence in the case. It is open to him either to examine him first or after one or two witnesses for the prosecution are examined. In his discretion he can examine the petitioner at any stage.

7. It is stated in the affidavit of the petitioner that no subpoena was served on him & a warrant has straightaway been issued against him, I am not quite certain as to the truth or otherwise of this allegation. The anxiety displayed by the petitioner not to enter the witness box shows that it is possible that he might have kept out of the

way from the service of the subpoena & that has resulted in a warrant being issued; or the magistrate has materials from which he has concluded that it is only by a warrant he can secure the presence of the petitioner in court. In any event, on the materials placed before me I am not prepared to say that the action of the Magistrate in issuing a warrant to secure the presence of the petitioner is either wrong or illegal. As already stated, this is an extraordinary application by a witness, in the case & there is no precedent for it. The application to quash the proceedings is refused & it must be dismissed.

8. As regards the petitioner's prayer for transfer I should say that it is still more extraordinary than the application to quash the proceedings. The petitioner is only cited as a witness for the prosecution in a case in which the police have filed a charge-sheet. The prosecution does not seek a transfer nor the accused but the witness (petitioner) wants it. Herein lies the extraordinary nature of the application. The petitioner is making all attempts to see that he is not examined as a witness; & he is very anxious and eager to make the court understand that he cannot give any useful evidence in the case. Still like a party interested, which alone can give him right to apply for transfer he has applied for a transfer of this case. The petitioner is either interested or not interested in the case. If he is interested in the case, then I cannot understand his attitude to avoid getting into the witness box & give evidence in respect of the complaint which he himself gave. If he is not interested in the case, then this application for transfer cannot lie. Either way the conduct of the petitioner is inexplicable. I am satisfied in this case that what the magistrate did was right & the allegations for transfer are ill-founded. The prayer for transfer is therefore refused & the petition is dismissed.