

(1938) 11 BOM CK 0031
In the Bombay High Court
Case No : Criminal Reference No. 113 of 1938

Emperor

APPELLANT

Vs

Dadu Rama Surde

RESPONDENT

Date of Decision : 22-11-1938

Acts Referred:

Citation : AIR 1939 Bom 150 : (1939) 41 BOMLR 282

Hon'ble Judges : Wassoodew, J; John Beaumont, J

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—This is a reference made by the Sessions Judge of Belgaum asking us to set aside an order made by the First Class Magistrate of Athni forbidding Mr. Joshi, the applicant, to appear as a pleader for the defence in two prosecutions, which were proceeding before the learned Magistrate, and in which the prosecution proposed to call Mr. Joshi as a witness. The question whether the Court has jurisdiction to forbid an advocate to appear in a particular case involves the consideration of conflicting principles. On the one hand, an accused person is entitled to select the advocate whom he desires to appear for him, and certainly the prosecution cannot fetter that choice merely by serving a subpoena on the advocate to appear as a witness. On the other hand, the Court is bound to see that the due administration of justice is not in any way embarrassed. Generally if an advocate is called as a witness by the other side, it can safely be left to the good sense of the advocate to determine whether he can continue to appear as an advocate, or whether by so doing he will embarrass the Court or the client. If a Court comes to the conclusion that a trial will be embarrassed by the appearance of an advocate, who has been called as a witness by the other side, and if, notwithstanding the Court's expression of its opinion, the advocate refuses to withdraw, in my opinion in such a case the Court has inherent jurisdiction to require the advocate to withdraw. An advocate cannot cross-examine himself, nor can he usefully address the Court as to the credibility of his own testimony, and a Court may well feel that justice will not be done if the advocate continues to appear. But, in my opinion, the prosecution in such a

case must establish to the satisfaction of the Court that the trial will be materially embarrassed, if the advocate continues to appear for the defence.

2. In the present case the learned Magistrate asked the Police Prosecutor whether Mr. Joshi was a material witness, and not merely a formal one, and the Police Prosecutor stated that from the point of view of the prosecution Mr. Joshi was a material witness. Mr. Joshi, however, has put in a statement from which it appears that he really knows nothing whatever about the facts on which the prosecution rely, and I am certainly not satisfied that his appearance for the defence will cause any embarrassment whatever to the trial of the case.

3. That being so, I think the learned Magistrate's order in both the prosecutions must be set aside.

Wassoodew, J.

4. I agree.