

(1938) 07 MAD CK 0002

In the Madras High Court

In Re: Kandan Padayachi and Others

Date of Decision : 29-07-1938

Acts Referred:

Citation : AIR 1938 Mad 878 : (1938) 48 LW 276 : (1938) 2 MLJ 446

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—Both these cases arise out of the same matter, namely, disallowance by the Second Class Magistrate of Ariyalur of Mr.

T.S. Arumugam Pillai, an Advocate, from appearing as counsel for the accused in a case of murder pending enquiry before the Magistrate. The

disallowance was entirely on the ground that he had been cited as a witness by the police in the charge-sheet. It would appear that there were

three charge-sheets filed in this case and the Advocate's name appears as a witness only in the last charge-sheet. But this is a minor matter. The

reason given for the disallowance is obviously unsound. The mere fact that a lawyer is cited as a witness by the prosecution will not disqualify him

from appearing as counsel for the accused in the case. No doubt it is not in accordance with professional etiquette for a lawyer who has given

evidence as a witness for the prosecution to accept or to continue to hold a brief from the accused. That is not the case here. The mere citing of an

advocate as a witness by the police does not operate as a disqualification. It is easy to imagine the extraordinary results which might follow

otherwise. The unfortunate effect of the order of the Magistrate has been that the accused have been continuing in custody for four months and

more. The order is therefore set aside and he is directed to allow the advocate to appear for the accused.