

(1967) 04 MAD CK 0048

In the Madras High Court

In Re: Karuthiah alias Ilayaperumal

Date of Decision : 26-04-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 161

Citation : (1967) 2 MLJ 459

Hon'ble Judges : N. Krishnaswamy Reddy, J

Bench : Single Bench

Judgement

N. Krishnaswamy Reddy, J.—This Revision Petition has been filed by the accused in P.R.C. No. 9 of 1966, to set aside the order of the Sub-Magistrate, Tirumangalam, in Crl. M.P. No. 301 of 1966, dated 24th May, 1966, dismissing that application.

2. It appears, in the charge-sheet filed by the police against the petitioner in P.R.C. No. 9 of 1966, an Advocate, Sri Lakshminarasimhan was cited as a witness for the prosecution. The petitioner filed an application before the Sub-Magistrate stating that he had engaged Sri Lakshminarasimhan, Advocate, Madurai, to defend him in that case, as the advocate was well-known to him and his family and that he had confidence only in him and that he should be permitted to appear for him, after directing the prosecution to dispense with him as a prosecution witness. He has further stated in his application that the advocate had been cited as a witness for the prosecution with ulterior motives in an attempt to deprive him of the service of the advocate. The Circle Inspector objected to the advocate appearing for the petitioner on the ground that he was a prosecution witness and that he had to speak to the fact of surrender of the petitioner before the Sub-Magistrate-II, Madurai and other connected facts.

3. The learned Sub-Magistrate dismissed the petition of the petitioner on the ground that there was no provision to direct the prosecution to dispense with the witness and hence Counsel was not permitted to appear for the petitioner.

4. There is no dispute that the advocate was cited as a witness for the prosecution in the charge-sheet. But the learned Counsel appearing for the petitioner contends that the statement of the advocate was not recorded by the

police u/s 161, Criminal Procedure Code and that his evidence is only formal to speak about the surrender of the petitioner before a magistrate. There is nothing to show that the advocate was acquainted with the facts of the prosecution case; or that he has to be examined in respect of relevant and material facts in the case. It appears from the petition that the advocate was engaged by the petitioner even as early as 5th April, 1966. The advocate seems to have surrendered the petitioner before the Magistrate for the purpose of moving for bail after having accepted the brief. The mere fact that the advocate has been cited as a witness by the prosecution in the charge-sheet will not disqualify him from appearing as Counsel for the petitioner in this case. As pointed out already, the prosecution is unable to say as to how the evidence of the advocate would be relevant or material for the purpose of establishing the prosecution case. There is also the fact that the statement of the advocate u/s 161, Criminal Procedure Code, has not been recorded.

5. In the circumstances mentioned above, I do not think the advocate who had been engaged by the petitioner to appear on his behalf can be prohibited from appearing for the petitioner. There cannot be any bar for the advocate appearing for the petitioner and he is permitted to appear.

6. The petition is allowed.