

(1921) 04 MAD CK 0022

In the Madras High Court

In Re: Vemureddi Babu Reddi

Date of Decision : 01-04-1921

Acts Referred:

Citation : (1921) ILR (Mad) 916

Hon'ble Judges : John Wallis, C.J;Krishnan, J

Bench : Division Bench

Judgement

1. These are applications put in by Mr. F.T. Ward, a first-grade pleader of Nellore, and by his client the first accused in a murder case, u/s 107 of

the Government of India Act and Section 435, Criminal Procedure Code, to set aside an order of the Second-class Magistrate of Kovur debarring

Mr. Ward from appearing as counsel for the first accused at the preliminary inquiry on the ground that his name appears in a supplemental list of

witnesses put in by the prosecution as forty-second 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, Volume 1, page 159 (18th Edition). The

same rule applies in Criminal cases: Roscoe's Criminal Evidence, page 114 (13th Edition), 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 has to conduct the case; and this is apparently the first case of its application to him which has

come before a superior Court. 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.

2. 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 v. Peary Mohan Dass I.L.R.*, (1913) *Calc.*, 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, J., in the

case just cited, on the authority of *Cobbet v. Hudson* 118 E.R., 341, and *Corea v. Peiris* (1909) A.C., 549, 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 first 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.