

(1921) 04 MAD CK 0014

In the Madras High Court

**In Re: Vemureddi Babureddi
In Re: F.T. Ward, Pleader for
Vemureddi Babureddi**

Date of Decision : 01-04-1921

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435
Government of India Act, 1915 — Section 107

Citation : AIR 1921 Mad 424 : (1921) 13 LW 702 : (1921) 41 MLJ 158

Judgement

1. These are applications put in by Mr. F.T. Ward, a first Grade Pleader of Nellore and by his client the 1st 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 2nd class Magistrate of Kovur debarring Mr.

Ward from appearing as Counsel for the 1st accused at the preliminary inquiry on the ground that his name appears in, a supplemental list of

witnesses put in by the prosecution as 42nd 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 Vol. 1 page 159, 18th Edn. The same rule applies in

Criminal Cases: Roscoe's Criminal Evidence page 114, 13th Edn; 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 have to conduct the case and this is apparently the first case of its application to them which has come before a superior Court.

2. 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. 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 and Others v. Peary*

Mohan Dass (1913) ILR 40 Cal. 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 in the case cited on the authority of *Cobbett v. Hudson* ILR (1913) Cal.

898 and *Corea v. Peiris* (1852) I.E. & B 11 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 1st 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.