(1907) 08 BOM CK 0020

Bombay High Court

Case No: O.C.J. Suit No. 92 of 1905

R.D. Sethna		APPELLANT
	Vs	
Mirza Mahomed Shirazi (No. 3)		RESPONDENT

Date of Decision: Aug. 16, 1907

Citation: (1907) 9 BOMLR 1044

Hon'ble Judges: Beaman, J

Bench: Single Bench

Judgement

Beaman, J.

The question being whether a counsel who has conducted his clients'' case can be called and allowed to give evidence as to material facts which occurred before he was retained, I think the answer must be given not with reference only to the provisions of the Evidence Act, but upon general principles and with special reference to the prestige and responsibilities of the bar. What earlier English lawyers thought of the practice is made plain enough by the language used by Lord Campbell, in describing what was done at the trial of Sir Thomas More (1535) How. St. Tr., 386, 390 where he said, with reference to the Solicitor-General offering himself as a witness and being allowed to testity, that it was an " eternal disgrace to the Court who permitted such an outrage on decency. "

2. The same point arose in Stones v. Byron (1846) 4 Dow. & L. 393 and this was made a ground for ordering a new trial. The same principle was confirmed in a later case of Deane v. Packwoodi. (1847) 4 Dow. & L. 895.

3. It is therefore clear that the opinion of English Judges has been, so far as I can find any expression of it, unanimous against counsel who have " warmly and sedulously " espoused the cause of the client, being allowed to offer themselves as witnesses on his behalf.

4. In coming to my conclusion, I was given pause by two instances which were mentioned by Mr. Setalvad to the contrary. The first of these was when Mr.

Inverarity was recently examined in a Land Acquisition case on behalf of his client. The second occurred during the trial of Sanjana before the present Chief Justice, when Mr. Bahadurji was also examined as a witness. In the latter case, however, I understand that Mr. Bahadurji''s evidence was given about matters which had occurred since he was retained as counsel. In those circumstances, there can of course be no objection to counsel being called upon to depose to them. But it seems to me a questionable principle and one which is contrary to the best interests and traditions of the Bar, to allow a counsel who has conducted the case of his client, knowing that he might be called upon to give evidence upon facts material to the success of the case, to give evidence at a later stage as a witness.

5. Here there is an additional reason why I think it would be improper to have Mr. Wadia''s evidence. He has been present in Court throughout, conducting as junior Counsel his client''s case with the utmost vigour and diligence. The point to which this evidence is directed is clearly defined. Mr. Wadia heard Mr. Justice Davar''s account of the transaction and he knows perfectly well every detail which Counsel expected to elicit from him. I do not intend to imply that this consideration would affect Mr. Wadia''s veracity in the slightest degree, but it might give rise to just complaint on the other side. Counsel for the plaintiff might reasonably say that Mr. Wadia had undue facilities for concentrating his mind upon every point of importance and preparing himself to meet every attack that might be made in cross-examination. It was urged by Mr. Jardine that considerations which influenced the English Judges in deciding the cases I have mentioned lose their force here for two reasons. The first, that this case has been tried not before a Jury but before a Judge and the Judge can safely be trusted to make all necessary discriminations between the advocacy and the evidence of Counsel. The second is that Mr. Wadia was only a junior Counsel who has taken no active part so far in the conduct of the case; he has not once addressed the Court or in any way put himself prominently forward. Neither of these reasons touches, I think, the principle on which I base my ruling. It appears to me extremely desirable, principally in the interest of the bar itself, to lay down, once for all, that the Court will not allow Counsel conducting cases to give evidence on behalf of their clients, in respect of matters with which they were acquainted before they were retained.