

Case Note: Case concerning the removal of a dam built by the upper riparian obstructing the flow of water to the lower riparians by the order of the magistrate acting under Section 133 of the Cr. P.C. The Court held that the same could not be done since the Magistrates powers under Section 133 only extended to the protection of public rights from nuisance while riparian rights were individual rights.

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IN THE HIGH COURT OF KERALA

Decided On: 09.09.1963

C.V. Muthuvelas Velappan

v.

K.V. Narayanan Nair

Hon'ble Judges:

P.T. Raman Nayar, J.

ORDER

P.T. Raman Nayar, J.

1. The complaint of the respondent, a lower riparian owner, was that the petitioner, a higher riparian owner, had, by putting up a masonry dam across the river, cut off the flow of water and deprived his lands of the water they had a right to enjoy. This interference with the rights of the respondent and other lower riparian owners was the basis of the learned Magistrate's conditional order under Section 133 of the Criminal Procedure Code requiring the petitioner to remove the bund or to show cause against the removal, as of his order under Section 137 (3) making the conditional order absolute. It seems to me obvious that this dispute does not come within Chapter 10 of the Code and that the learned Magistrate acted altogether without jurisdiction. Section 133, (in so far as is relevant for the present purpose) empowers a Magistrate to take action thereunder when he considers "that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public," and, as pointed out in *In re, Maharana Shri Jaswatsangji*, ILR 22 Bom 988 at p. 993, these words "imply not only that the river or channel must be one of public use, but that the obstruction must be of that public use". Section 139-A enacted after this decision clearly defines the scope and purpose of an order under Section 133. It is for "the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place." It follows that the section can be used only where there has been an invasion of public rights.

But the rights of riparian owners, however numerous 'they may be, are the private personal rights of each individual owner and are not the rights of the public, and, in directing the petitioner to remove the dam in question on the ground that it Interfered with the rights of irrigation of the lower riparian owners, the learned Magistrate took it upon himself to decide what Chapter 10 of the Code did not authorise him to decide and what was really for a civil Court to decide.

2. I allow this petition and set aside the order made -by the Magistrate.

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