

SUPPAN  
CHETTI,  
*In re.*

myself in complete agreement, and it was certainly never intended that the procedure of a village magistrate should be open to such criticism as would be appropriate in the case of higher Courts. No doubt if the village magistrate had refused to allow the accused to put any questions there might be ground for interference, but I have not been satisfied that he took such a course here.

With the modification indicated above I dismiss this Criminal Revision Petition.

B.C.S.

---

## APPELLATE CRIMINAL.

*Before Mr. Justice Curgenvven.*

MAHAMUD AMIRKHAH AND EIGHT OTHERS  
(COUNTER-PETITIONERS), PETITIONERS,

v.

MAHALINGAM PILLAI AND THIRTY-NINE OTHERS  
(PETITIONERS), RESPONDENTS. \*

*Criminal Procedure Code, sec. 147—Expression “land or water”  
—If restricted to private property—Public street—If  
included in expression.*

The expression “land or water” as used in section 147 of the Code of Criminal Procedure is not necessarily restricted to private property, though it applies only to private property in sub-section (1) of section 145.

Section 147 of the Code of Criminal Procedure applies where the question is whether a certain community is entitled to use a public street, such user being resisted by another community living in that locality. *Sudalaimuthu Chettiar v. Enan Samban*, (1915) 81 LC., 367, *Karupanna Goundan v. Kandasami Goundan*, (1914) 26 M.L.J., 233, followed.

---

\* Criminal Revision Case No. 890 of 1926.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order, dated 22nd October 1926, of the Court of the District Magistrate of Ramnad in Civil Miscellaneous Petition No. 88 of 1926, Miscellaneous Case No. 32 of 1926 on the file of the Court of the Sub-divisional Magistrate of Ramnad.

AMIRKHAN  
V.  
MAHALINGAM  
PILLAI.

*F. S. Vaz* for petitioners.

*Public Prosecutor* for the Crown.

*V. L. Ethiraj* and *M. Somasundram* for respondents.

### JUDGMENT.

This is a Criminal Revision Petition arising out of proceedings taken under section 147 of the Code of Criminal Procedure in which the question which arose was whether the Hindu community were entitled to use a certain street, such user being resisted by the Muhammadans who live in that locality. The learned Subdivisional Magistrate found that the street was a public one, and the first question raised is whether section 147 of the Code of Criminal Procedure has application in such circumstances. There is very little case law upon this subject. In *Kolandai Nayakan v. Karabudda Savudri* (1) which was under the old Code, application of the corresponding section was considered to be open to question. In *Sudalaimuthu Chettiar v. Enan Samban* (2) and *Karuppanna Goundan v. Kandaswami Goundan* (3) on the other hand, it was held that there was nothing in the language of the section which precluded its application to similar circumstances. In *In re Narayana* (4) related to section 552 of the Code of 1872, which was drafted in quite different terms, and

(1) (1896) 6 M.L.J., 193.

(3) (1914) 26 M.L.J., 233.

(2) (1915) 81 I.C., 367.

(4) (1884) I.L.R., 7 Mad., 49.

AMIRKHAN  
v.  
MAHALINGAM  
PILLAI.

the decision therefore affords no guide. I do not find anything in the section as now amended by the Code of 1923 to render the two decisions which I have referred to inapplicable. The Magistrate has to satisfy himself that there exists a dispute likely to cause a breach of the peace regarding any alleged right to user of any land or water as explained in section 145, sub-section (2) whether such right is claimed as easement or otherwise. Sub-section (2) of section 145 merely lays down that the expression land or water includes buildings, markets, fisheries, crops, or other produce of land and rents or profits of any such property. That does not in my view make the expression "land or water," as used in section 147, necessarily refer only to private property though of course it does necessarily so refer in sub-section (1) of section 145. The learned counsel for the petitioners had advanced certain other arguments with the design of showing that the section is not appropriately worded for such a case as this but after giving them due weight I do not feel disposed to differ from the view that has previously been taken by this Court. I think therefore that the Sub-divisional Magistrate was not wrong in having recourse to this section.

It is then said that he did not satisfy himself that a breach of the peace was threatened, but I think it is clear from several passages in his order that he had this probable risk in view throughout, and although at one stage the parties entered into a compromise yet the Hindus immediately resiled from it and that circumstance certainly does not show that the danger of such a breach was absent. The actual directions which the Court gave are contained in paragraphs 23 and 24 of its order, where the Magistrate says that the Hindus must be allowed to pass through the street with Mnlpari,

which refers to the particular case of the procession which they wished to take and, more generally in paragraph 24, that the Muhammadans are prohibited from interfering in any manner with the use of the Hindus of the street. It, appears to me that this is an order which can be legally passed under section 147. That section contains a proviso that the right asserted must have been previously exercised, and the Court appears to me to have found both generally that the Hindus used the street and particularly that they had taken the procession during the previous season. The order seems to me to amount to no more than a finding that the street is a public one and a declaration of the ordinary legal rights of the Hindus as members of the Public. This order was taken up in revision to the District Magistrate and he refused to interfere with it. I agree with his view and accordingly dismiss this petition.

AMIRKHAN  
v.  
MARALINGAM  
PILLAI.

B.C.S.

---