

1957

Present : Sinnetaṃby, J.

SINNA GURA, Appellant, *and* INSPECTOR OF POLICE, KARAWANELLA, Respondent

S. C. 1,320—M. C. Avissawella, A. 794

Criminal Procedure Code—Sections 105 and 109 (3)—Applicable only to public nuisances.

Section 105 of the Criminal Procedure Code applies to public, and not to private, nuisances. A Magistrate, therefore, is not entitled to make an order under that section in respect of a tree standing on a neighbour's land although it is likely to fall down and damage buildings of the complainant and injure members of his family.

APPPEAL from a judgment of the Magistrate's Court, Avissawella.

T. W. Rajaratnam, for Respondent-Appellant.

S. Pasupati, Crown Counsel, for Attorney-General.

March 12, 1957. SINNETAMBY, J.—

The appeal is against an order made by the learned Magistrate of Avissawella under the provisions of section 109 (3) of the Criminal Procedure Code making absolute a conditional order under section 105 of the Code relating to public nuisances. The evidence in this case shows that the damage which was likely to be caused by the jak tree in question would be confined to the complainant and the members of his family. By complainant I refer to Velun Singho, on whose complaint the police had filed this case. The learned Magistrate has not considered this aspect of the matter but had come to the conclusion that the tree in question was likely to fall down and damage buildings of the complainant and injure his children. Learned Counsel for the appellant contended that in these circumstances the Magistrate was not entitled to make an order under section 105. He cited the case of *Fernando v. Fernando*¹, which is conclusive on the point. Soertsz, A.J., who delivered the judgment held that there is no provision in the Criminal Procedure Code which gives jurisdiction to a Magistrate to entertain a prayer for relief against a private nuisance and that the provisions of the Criminal Procedure Code are intended for suppression of public nuisances. In that case, as in this, a tree standing on a neighbour's land, it was established, was likely to injure the complainant and the other members of his family. The learned Magistrate has not appreciated the fact that Cap. 9 relates only to public nuisances.

The order appealed against is accordingly quashed.

Order quashed.

