

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Miscellaneous Application No.S-693 of 2025

[Noor Hassan & others v. SDO Irrigation, Phuleli Canal Sub-Division Matli & others]

Counsel for Applicants:

Mrs. Razia Ali Zaman Patoli, Advocate.

Counsels/ Representatives for Respondents:

Mr. Akhtar Ali Abro, Advocate for Respondent No. 1

Mr. Zafar Ali Leghari, Advocate for Respondent No. 4 & 5

Mr. Irfan Ali Talpur, DPG a/w Masood Ali Memon SDO Irrigation, Phuleli Canal Division.

Date of Hearing:

06.04.2026

Date of Order:

20.04.2026

ORDER

RIAZAT ALI SAHAR, J: - Through this instant Criminal Miscellaneous Application under Section 561-A Cr.P.C., the applicants have invoked the inherent jurisdiction of this Court, seeking redress against the illegality, arbitrariness and patent misuse of process of law committed by the learned Courts below while passing the impugned orders dated 17.01.2025, 06.05.2025 and 29.09.2025, contending that the said orders have been passed without lawful authority, in excess of jurisdiction and in clear disregard of settled principles governing proceedings under Section 133 Cr.P.C., thereby resulting in grave miscarriage of justice and causing irreparable loss to the applicants.

2. The background of the case is that the dispute between the parties pertains to the alleged flow and alignment of Watercourse No.2-BL, Shaikh Murad Distry, Phuleli Canal, Matli. The applicants, being owners and cultivators of agricultural land bearing Survey Nos.119 and 440, assert that the said watercourse was originally sanctioned and flowing through Government Bhadda land and not through their private land. It is their case that respondents No.4 and 5, with *mala fide* intention and under political influence, attempted to unlawfully divert and enforce the flow of the said watercourse through the private land of the

applicants, causing substantial loss and interference with their proprietary rights. Upon resistance by the applicants, the private respondents initiated proceedings under Section 133 Cr.P.C. before the learned Magistrate by alleging obstruction and public nuisance, which were allowed without proper inquiry into the sanctioned alignment or legal entitlement. The subsequent criminal revision preferred by the applicants was also dismissed.

3. Learned counsel for the applicants argued that the impugned orders passed by the learned courts below are wholly unsustainable in the eyes of law, being the result of misreading and non-reading of material evidence, as well as assumption of jurisdiction not vested in them. It was vehemently contended that the entire proceedings initiated under Section 133 Cr.P.C. are misconceived and without lawful authority, as the dispute in question does not constitute a “public nuisance” within the contemplation of the said provision, but rather pertains to a private dispute regarding alleged alignment and flow of a watercourse, which squarely falls within the domain of the Irrigation and Revenue authorities, and if at all, is of purely civil nature requiring adjudication by a competent civil forum. Learned counsel submitted that no document, sanction, map, or official record was ever produced before the learned Magistrate or revisional Court to establish that Watercourse No.2-BL, Shaikh Murad Distry, was ever sanctioned to pass through the private land of the applicants bearing Survey Nos.119 and 440; rather, the available record, including spot inquiry reports and maps, clearly indicates that the said watercourse originally flows through Government Bhadda land. It was further argued that the learned courts below mechanically relied upon the reports of official respondents without subjecting the same to judicial scrutiny, nor affording due weight to the objections and material placed by the applicants, thereby resulting in grave miscarriage of justice. Learned counsel emphasized that even according to the contents of the application under Section 133 Cr.P.C., the private respondents themselves admitted that the watercourse passes through the land of the applicants, which in itself negates the applicability of Section 133 Cr.P.C., as no person

can be compelled, through summary criminal jurisdiction, to allow use of his private property in absence of lawful sanction or easementary right established through due process. It was further contended that the proceedings were tainted with *mala fides*, political influence and collusion between the private respondents and official functionaries, who deliberately concealed the true sanctioned alignment of the watercourse and attempted to forcibly divert the same through the applicants' land. Learned counsel also submitted that the impugned orders have been passed in violation of settled principles of law governing Section 133 Cr.P.C., which mandates existence of an imminent public nuisance affecting the community at large, whereas in the present case, the dispute is inter se between private individuals relating to agricultural water distribution, for which adequate and efficacious remedies are available under the relevant irrigation laws and civil jurisdiction. It was lastly contended that the applicants are suffering irreparable loss, both financial and proprietary, and unless the impugned orders are set aside, the respondents, with the aid of police machinery, would forcibly interfere with the lawful possession of the applicants, thereby causing further injustice. Hence, it was prayed that the impugned orders be set aside and the applicants be protected from any coercive action.

4. Conversely, learned Deputy Prosecutor General, duly assisted by the counsels for the private respondents, argued that the impugned orders passed by the learned courts below are perfectly legal, justified and based upon proper appreciation of material available on record, thus calling for no interference by this Court in exercise of its inherent jurisdiction under Section 561-A Cr.P.C. It was contended that the applicants have deliberately and unlawfully dismantled and obstructed the functioning of Watercourse No.2-BL, Shaikh Murad Distry, Phuleli Canal, Matli, which was duly sanctioned and had been in continuous use for irrigation purposes for a considerable period, thereby depriving the private respondents of their lawful share of irrigation water and causing severe damage to their standing crops. Learned counsel submitted that the act of the applicants squarely falls within the

mischief of “public nuisance” as envisaged under Section 133 Cr.P.C., inasmuch as the obstruction of a functioning watercourse affects not only the private respondents but also the agricultural community at large dependent upon the said watercourse. It was further argued that the learned Magistrate, after following due process of law, issuing notices to the parties and considering reports of the concerned irrigation authorities as well as police officials, rightly exercised jurisdiction under Section 133 Cr.P.C. to remove the obstruction and restore the watercourse to its sanctioned alignment and such findings were duly affirmed by the learned revisional Court through a well-reasoned order. It was also contended that the applicants have failed to produce any cogent or documentary evidence to substantiate their claim that the watercourse was not passing through their land or that the same was unlawfully diverted by the respondents; rather, the official reports and site inspections clearly establish the existence and functioning of the watercourse along its alignment, which had been interfered with by the applicants. Learned DPG further argued that the inherent jurisdiction of this Court under Section 561-A Cr.P.C. is to be exercised sparingly and only in exceptional circumstances, and cannot be invoked to re-appreciate evidence or substitute concurrent findings of fact recorded by two courts below, particularly where no jurisdictional defect or illegality has been demonstrated. It was lastly contended that the applicants, by approaching this Court, are merely attempting to delay the lawful restoration of the watercourse and to perpetuate their illegal acts, which, if allowed, would result in irreparable loss to the respondents and may also lead to breach of peace and law and order situation in the area. Therefore, it was prayed that the instant application being devoid of merits be dismissed.

5. Heard and record perused.

6. The controversy in the present matter revolves around the exercise of jurisdiction by the learned Magistrate under Section 133 Cr.P.C., and the subsequent affirmation thereof by the revisional Court. The pivotal question requiring determination by

this Court is whether the dispute between the parties truly constituted a “public nuisance” within the contemplation of Section 133 Cr.P.C., or whether the same was essentially a private dispute of civil nature, camouflaged as a public grievance so as to invoke the summary jurisdiction of the criminal court.

7. In the present case, the existence of Watercourse No.2-BL stands substantiated, *inter alia*, through Letter No.IC/D-55(A)/52/F/92/605 issued by the Left Bank Circle, Hyderabad dated 08.03.1993, which evidences that the watercourse was in existence as far back as the year 1993. This official record lends credence to the stance of the respondents that the watercourse was a functioning channel meant for irrigation purposes and had been serving the agricultural community.

8. The argument advanced by the applicants that the dispute is purely of civil nature and pertains to private land, though attractive at first glance, cannot be accepted in its entirety. Even where a portion of land is privately owned, if a watercourse exists and is being utilized for the benefit of a number of cultivators or a section of the public, its obstruction assumes the character of a public nuisance. The test is not the ownership of land per se, but the nature and extent of the right being affected.

9. The material available on record, including reports of the irrigation authorities and site inspections, indicates that the watercourse in question was serving multiple stakeholders and its obstruction had the effect of depriving downstream users of their lawful share of irrigation water. Such obstruction, therefore, cannot be treated as a mere private dispute but falls within the ambit of interference with a public utility.

10. The learned Magistrate, after issuing notices, affording opportunity of hearing to the parties and considering the reports of competent authorities, exercised jurisdiction under Section 133 Cr.P.C. to remove the obstruction and restore the watercourse. The findings so recorded are based upon appreciation of material

available on record and do not suffer from any jurisdictional defect or legal infirmity.

11. The revisional Court has also examined the matter and has concurred with the findings of the learned Magistrate. No perversity, illegality, or misreading of evidence has been pointed out which may justify interference by this Court in exercise of its inherent jurisdiction under Section 561-A Cr.P.C.

12. It is well settled that the inherent jurisdiction of the High Court is to be exercised sparingly and with circumspection, particularly where the findings of fact recorded by the courts below are concurrent in nature. This Court cannot act as a court of appeal to reappraise evidence unless it is shown that the impugned orders suffer from patent illegality or result in miscarriage of justice, which is not the case here.

13. The contention of the applicants regarding disputed alignment and proprietary rights, at best, raises questions which may be agitated before the competent civil or irrigation forums; however, the same does not *ipso facto* oust the jurisdiction of the Magistrate under Section 133 Cr.P.C. where unlawful obstruction made by private persons over watercourse, already existed, affecting a section of the public is established.

14. In view of the foregoing, I am of the considered opinion that the impugned orders dated 17.01.2025, 06.05.2025 and 29.09.2025 have been passed in accordance with law and do not call for interference. Consequently, the instant Criminal Miscellaneous Application is **dismissed**, being devoid of merits.

JUDGE

Approved for reporting

A.C.