

1976 Present : Malcolm Perera, J. and Gunasekera, J.

G. W. PEMAWATHIE, Applicant-Appellant

and

R. A. DHARMAPALA, Defendant-Respondent

S. C. 507/74—34898/AMC Colombo

*Maintenance Ordinance section 6—Whether evidence of the mother of an illegitimate child essential requirement before order for maintenance.*

The defendant-respondent was sued for maintenance for an illegitimate child born to one Vithanage Hema. The applicant was not the mother of the child and the mother did not give evidence before the learned Magistrate.

The relevant part of section 6 of the Maintenance Ordinance reads "..... and no order shall be made on any such application aforesaid on the evidence of the mother of such child unless corroborated in some material particular by other evidence to the satisfaction of the Magistrate."

*Held:* That the wording of section 6 of the Maintenance Ordinance did not mean that the evidence of the mother is an essential requirement before a Magistrate could make an order for the maintenance of an illegitimate child.

Case referred to :

*Karuppiah Kangany vs. Ramasamy Kangany*, 52 N.L.R. 262.

**A** PPEAL against a judgment of a Magistrate's Court, Colombo

H. M. P. Herat for the applicant-appellant.

G. P. Mahikanda for the defendant-respondent.

October 29, 1975. MALCOLM PERERA, J.

The point for determination in this appeal is whether under section 6 of the Maintenance Ordinance it is an essential requirement that the mother of an illegitimate child should give evidence, before a Magistrate could make an order for the maintenance of such child.

In this case the defendant-respondent was sued for maintenance for an illegitimate child named Sudharma Tikiri Kumari born to one Vithanage Hema. Vithanage Hema, the mother of this child did not give evidence. The applicant in this case, in support of her case, produced the birth certificate marked P1 where the defendant-respondent has admitted the fact of his paternity. She also stated that in her presence the defendant signed P1 admitting paternity. The defendant has stated in evidence, "I have signed as the informant. I was asked to sign. One officer in the hospital asked me to sign when the child was handed over. Without looking at the document I signed. The officer gave me the book. I placed my signature." The learned trial judge has accepted the evidence of the applicant and disbelieved the evidence of the defendant. The trial

judge has stated, "I am not impressed by the evidence of the defendant because he said that he simply signed the document relating to the birth register of the first child, merely because he was asked to sign. It is clear that the defendant is the father of the first child too, but unfortunately the evidence of the mother is not available to court and therefore in terms of section 6 of the Maintenance Ordinance, there is no sufficient material for this court to hold that the defendant is the father of the child Sudharma Tikiri Kumari."

The relevant part of section 6 of the Maintenance Ordinance reads thus, "..... and no order shall be made on any such application as aforesaid on the evidence of the mother of such child unless corroborated in some material particular by other evidence to the satisfaction of the Magistrate." In my view this part of section 6 of the Maintenance Ordinance means that where a mother of an illegitimate child gives evidence before a Magistrate he cannot make an order for maintenance upon her evidence alone. The law requires that the evidence should be corroborated in some material particular, however credit-worthy and reliable such evidence may appear to the Magistrate. I do not think the law ever intended to deprive maintenance to an illegitimate child where the mother has not given evidence. There can be cases where the mother is dead or where she is so ill and unable to appear in court or where she is insane or where her whereabouts are not known. There can be cases where the person applying for maintenance on behalf of an illegitimate child may be able to adduce convincing evidence that the defendant is the father of the child, such as, admissions of paternity made by the defendant.

I find support for my view in the judgment of Swan J. in the case of *Karuppiah Kangany vs. Ramasamy Kangany*, 52 N.L.R. 262. In that case it was held that section 6 of the Maintenance Ordinance cannot be interpreted to mean that the evidence of the mother is an essential requirement, and that without it a Magistrate would have no jurisdiction to make an order for the maintenance of an illegitimate child.

I set aside the order of the learned Magistrate and allow this appeal. I order the defendant to pay a sum of Rs. 50 per month as maintenance for the child Sudharma Tikiri Kumary Rupasinghe. The applicant will be entitled to a sum of Rs. 50 as costs in the Magistrate's Court, and a sum of Rs. 200 as costs in appeal.

GUNASEKERA, J.—I agree.

*Appeal allowed.*