

1951

Present : Nagalingam J.

SOMASUNDERAM, Appellant, and PERIYANAGAM, Respondent

S. C. 517—M.C. Nuwara Eliya, 6,414

Maintenance—Illegitimate child—Applicant's evidence that defendant supported child within a year of its birth—Corroboration not necessary—Maintenance Ordinance (Cap. 76), s. 6.

In an application for the maintenance of an illegitimate child no corroboration of the applicant's evidence on the point as to whether the defendant had maintained the child within a year of its birth is required.

APPEAL from a judgment of the Magistrate's Court, Nuwara Eliya.

M. I. Mohamed, for the defendant appellant.

D. J. Thampu, for the applicant respondent.

Cur. adv. vult.

September 26, 1951. NAGALINGAM J.—

The defendant appeals from an order of the learned Magistrate ordering him to pay a sum of Rs. 10 per mensem by way of maintenance for the illegitimate child of the applicant of which the applicant alleges the defendant is the father.

There is ample evidence to sustain the finding of the learned Magistrate that the defendant is the father of the child. Apart from other evidence there is the defendant's own admission that he did have sexual relationship with the applicant. But, of course, he denied paternity on the ground that at or about the date the child could have been conceived and subsequent thereto he had nothing to do with the applicant but that the latter was in the habit of receiving other men. The Magistrate has given very cogent reasons supported as they are by the evidence in the case for his decision on the point, so much so that learned Counsel for the appellant felt that he could not properly canvass that finding.

Appellant's counsel, however, attacked the judgment on the ground that as the application for maintenance had been made after the lapse of twelve months from the birth of the child—in fact the application was made about two and a half years after—the proof accepted by the learned Magistrate that the defendant had maintained the child within twelve months of its birth was based upon hearsay evidence and that the finding of the learned Magistrate upon this point could not be sustained.

The evidence complained of is that given by the Assistant Superintendent of the estate who stated that the defendant's father had told him on several occasions that the defendant was giving money to the applicant. The learned Magistrate after examining all the evidence came to the conclusion that that statement alleged to have been made by the father had also reference to a period subsequent to the birth of the child and therefore was corroborative of the evidence given by the applicant herself that the defendant had maintained the child after its birth. The applicant also called the father of the defendant as her witness, but he denied that he ever made such a statement as deposed to by the Assistant Superintendent. It cannot be doubted but that on the denial of the defendant's father of his having made any such statement to the Assistant Superintendent the latter's evidence on the point became unacceptable. In fact there was nothing to indicate whether the defendant's father of his own knowledge or from information given by some other person did come to the conclusion that his son was paying money to the applicant. But whatever view one may take of his statement, the Assistant Superintendent's evidence on the point was inadmissible and could not be relied upon. But I think the learned Magistrate quite correctly stated the law when he said that no corroboration of the applicant's evidence on the point as to whether the defendant had maintained the child within a year of its birth is required. And as the learned Magistrate has accepted that evidence, there is sufficient evidence on record upon which the view of the Magistrate can be supported.

I do not therefore think there is any occasion to interfere with the order passed by the Magistrate. I therefore dismiss the appeal with costs.

Appeal dismissed.