PUNCHIBANDA

v.

SEELAWATHIE

COURT OF APPEAL.
ABEYAWARDENA, J. AND RAMANATHAN, J.
C.A. 287/83 - FAMILY COURT, BADULLA 65749.
OCTOBER 2, 1986.

Judgment–Must judgment be dated?–Code of Criminal Procedure Act No. 15 of 1979, sections 279 and 283–Basic Maintenance–Maintenance for illegitimate child–Corroboration–Maintenance Ordinance, section 6–Evidence Ordinance, section 157–Does previous statements made by applicant amount to corroboration of her evidence–Admissibility in evidence of admission made by respondent to Police–Limitations in the Code of Criminal Procedure Act No. 15 of 1979, whether applicable.

The applicant claimed maintenance from the respondent for her illegitimate child alleging the respondent to be the father of the child. The applicant had made a statement (P1) to the Police and to the Grama Sevaka in the presence of her mother both of which claimed that the respondent was the father of the child. In addition, the respondent had made a statement (P2) to the Police wherein he admitted paternity.

The judgment of the Magistrate making order for the payment of maintenance for the child was not dated but the journal entry of that day stated "see order".

Held–

(1) The fact that the journal entry stated the date of the Order, is sufficient compliance with the requirements of sections 279 and 283 of the Code of Criminal Procedure Act No. 15 of 1979. The mere fact that the Order has not been dated does not constitute an irregularity.

(2) The nature of a maintenance action is basically enforcing civil liability and is not a criminal proceeding. The Provisions of the Code of Criminal Procedure Act which impose a limitation in regard to the use of statements recorded by the Police in the course of investigation apply only in criminal cases. The respondent in a maintenance case does not stand in the same position of an accused person and the prohibitions applicable in criminal proceedings do not apply in maintenance actions. P2 is admissible and a judge is entitled to act upon it.

(3) Previous statements made by the mother of an illegitimate child to a third party as to the paternity of the child is sufficient corroboration of her evidence for the purpose of section 6 of the Maintenance Ordinance. The applicant's evidence is sufficiently corroborated by P 1 and the applicant's statement to the Grama Sevaka.

(4) Where there is evidence which if believed supports the Magistrate's conclusion that the evidence of the applicant is corroborated in some material particular, an appellate court should not on a reading of the depositions interfere on questions as to the mere degree of corroboration.

Cases referred to:

(1) *Ponnammah v. Seeni Thamby – (1922) 22 N.L.R. 395.*

(2) *Wijeratne v. Kusumawathie – (1948) 49 N.L.R. 354.*

APPEAL from a judgement of the Family Court, Badulla.

Sanath Jayatilleke for appellant.

J. C. T. Kotalawala for respondent.

Cur. adv. vult.

October 30, 1986.

RAMANATHAN, J.

The applicant claimed maintenance in the Magistrate's Court of Badulla from the respondent for her illegitimate child born on the 3rd February 1980 alleging the respondent to be the father of the child.

The applicant's evidence was that the respondent was her brother-in-law. When she had gone to assist her sick sister in the house-work in the respondent's house the respondent had sexual intercourse with her and she had conceived in April 1979.

The Magistrate in his order has stated that there is no necessity to look for corroboration of the applicant's evidence in view of the respondent's statement to the Police P2 made on the 22nd of September 1979 where the respondent had admitted sexual intercourse with the applicant and was prepared to pay some money till the child was born and after the birth to increase it. He was prepared to adopt the child after a blood test.

The applicant in her evidence has stated that she had sexual intercourse with the respondent in April 1979 and thereafter her periods had stopped. However the applicant in her statement to the Police P1 has stated that she went to the respondent's house in May 1979. A point was made as to this discrepancy in the evidence. The trial judge has reconciled this discrepancy on the basis that it was a mistake on the part of the applicant and that the statement had not been read over to her by the Police.

The respondent had not given evidence but his wife had stated that the applicant was not residing in the house at the material time.

The Magistrate had accepted the evidence of the applicant and also that her evidence has been corroborated and ordered a sum of Rs. 100 as maintenance for the child. It is against this order that the respondent has appealed.

The following six submissions were made by counsel for the respondent-appellant:–

(1) That the Magistrate has failed to date and pronounce the judgment in open court as required by sections 279 and 283 of the Code of Criminal Procedure.

(2) The Magistrate has misdirected himself on the law when he stated, that one does not have to look for corroboration of the applicant's evidence in view of the statement made by the respondent to the Police on 24th September 1979 marked P2. It was submitted that statements made to a Police Officer can be used only for restricted purposes. Furthermore section 110 of the Criminal Procedure Code makes a respondent to be in the same position as an accused person.

(3) The Magistrate, having misdirected himself on the admissibility of P2 has lost sight of the requirements of section 6 of the Maintenance Ordinance read with section 157 of the Evidence Ordinance. The Magistrate has failed to analyse the evidence placed before him.

(4) There is no judgment as it does not contain the basic elements of a judgment.

(5) The evidence does not lead to the irresistible conclusion that the respondent is the father of the child.

(6) It was also submitted that the Magistrate has stated in his order that the respondent's request of confidentiality had to be taken seriously in view of the practice of some Kandyans to keep the sisters of their wives as mistresses has clearly drawn to the personal knowledge of the Magistrate with regard to the habits of Kandyans and although it has been also referred to in the written submissions of the appellant's counsel in the lower court. This makes it worse as it is the personal knowledge of counsel which the Magistrate has adopted in his order without any consideration to its truth or falsehood. Reference was made to 15 NLR page 36.

On the first question raised by counsel in his submissions, we are satisfied that the judgment has been pronounced in open court and has been dated. We have perused the journal entries in the record and observed that on the 6th December 1982 it has been recorded that the order will be for 10th January 1983. Furthermore, the journal entry of 10th January 1983 stated 'see order'. Therefore the order was delivered on 10th January 1983. We have also observed that the petition of appeal has not stated that the order was not delivered on 10th January 1983.

The fact that the journal entry has stated the date of the order is sufficient compliance with the requirements of the Criminal Procedure Code. The mere fact that the order has not been dated does not constitute an irregularity and we are of the opinion, that there is a valid judgment made by the trial court judge.

As regards the second submission made by counsel that the Magistrate has misdirected himself in relying on P2 as it was not admissible under the Evidence Ordinance and the Criminal Procedure Code. It must be remembered that P1 was the applicant's statement to the Police and P2 was the respondent's statement to the Police.

The nature of a maintenance action is basically enforcing a civil liability where a father is under a duty to support his legitimate as well as illegitimate begotten children. A mother on behalf of a child can compel the performance of this duty to support both the child and herself. The Maintenance Ordinance does not deal with criminal matters but has merely vested the Magistrate's Court with this jurisdiction as the Magistrate's Court is the quickest, easiest and cheapest method of enforcing this civil obligation. Though filed in the Magistrate's Court they are not like ordinary criminal cases. The rules of procedure are relaxed. There is no charge on plea recorded as in a criminal case. The only question asked from a respondent is as to whether he admits paternity and marriage.

I am of the opinion, that P2 is a statement made by the respondent and is admissible and a judge is entitled to act upon it. The provisions in the Criminal Procedure Code, which impose a limitation in regard to the use of statements recorded in the course of investigation applies only in criminal cases. Therefore admissions are admissible. The respondent does not stand in the same position as an accused person and the usual prohibition applicable in criminal proceedings do not apply in maintenance actions.

The third submission was that the Magistrate had lost sight of the requirements of section 6 of the Maintenance Ordinance read with section 157 of the Evidence Ordinance.

Let us examine the requirements of section 6 of the Maintenance Ordinance. In terms of this section no order for maintenance can be made on the mother's evidence unless there is corroboration of that evidence in some material particular by other independent evidence, to the satisfaction of the Magistrate.

I am of the opinion, as maintenance actions are not criminal proceedings and that section 157 of the Evidence Ordinance applies to corroborate the testimony of an applicant with the former statement of the witness as to the same facts in a maintenance case. The type of corroboration required by section 6 of the Maintenance Ordinance makes an applicant's former statement as to the same fact admissible. Therefore previous statements made by the mother of an illegitimate child to a third party as to the paternity of the child is sufficient corroboration for the purpose of satisfying the requirements of section 6 of the Maintenance Ordinance. This is the correct position in law as seen in *Ponnammah v. Seeni Thamby* (1). This was a full Bench consisting of Bertram, C.J., Ennis, J. and De Sampayo, J. where Bertram, C.J. expressed the view that a statement made at or about the time when sexual intimacy is continuing between the parties would fall within section 157 of the Evidence Ordinance. Therefore a statement by the woman to another person alleging intimacy is corroboration within section 157 of the Evidence Ordinance. Therefore the law is well settled with regard to the admissibility of previous statements in maintenance actions.

In the present case there is corroboration. The complainant's statement to the Police P 1 and also the applicant's statement to the Grama Sevaka in the presence of her mother would be sufficient corroboration in terms of the Maintenance Ordinance requirements.

On the fourth submission that the learned Magistrate's order does not amount to a judgment, I need only to state that he has dealt with the points at issue when he pronounced the finding, that the respondent is the father and ordered to pay maintenance at Rs. 100 per month to the child. The Magistrate has been satisfied with the applicant's evidence. The respondent has not given evidence. In a case of this type where convincing evidence has been led by the applicant it is unfortunate that the appellant has not deemed it necessary to give evidence. The respondent has called his wife to give evidence which has not been accepted by the Magistrate. We are satisfied that the Magistrate's order is a valid judgment.

On a balance of evidence before the Magistrate, he has been satisfied by the applicant's evidence. An appellate court must bear in mind the words of Basnayake, J. in *Wijeratne v. Kusumawathie* (2). In considering in appeal the question under section 6 of the Maintenance Ordinance, it was stated that the court should give due weight to the words "to the satisfaction of the Magistrate". These words in his view require that where there is evidence which if believed supports the Magistrate's conclusion that the evidence of the mother of the child is corroborated in some material particular. Then an appellate court should not on a reading of the depositions interfere on questions as to the mere degree of corroboration.

Finally, on the submission regarding the statement made by the Magistrate in his order about the habits of some member of a section of a community of this country, we are of the view that the Magistrate should not have made this false assumption in his order which is erroneous and unwarranted. It is hoped that irresponsible and flippant submissions of counsel is not incorporated in judicial orders but treated with the contempt it deserves by eschewing them. It is regretted that this Magistrate made such an observation but we see no reason to interfere with the order on this score, as it has not caused any prejudice to the appellant.

The Magistrate has considered the issues raised and has followed the correct legal principles applicable to maintenance applications and has accepted the evidence of the applicant and has come to a finding of fact. We do not see any grounds to interfere with his findings. The judgment of the Magistrate is affirmed and the appeal is dismissed.

The Magistrate is directed to recover the arrears of maintenance from the date of the institution up to date in reasonable instalments for the child. The appeal is dismissed. We fix costs at Rs. 210.

ABEYWARDENA, J. – I agree.

Appeal dismissed.

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