

1942

Present : Wijeyewardene J.

SOPIYA *v.* WILBERT.742—M. C. *Avissawella*, 23,365.

*Confession to Police Officer—Maintenance proceedings—Statement by respondent to Police Officer—Evidence Ordinance, s. 25.*

A confession made to a Police Officer by the respondent to maintenance proceedings is not obnoxious to section 25 of the Evidence Ordinance.

**A** PPEAL from an order of the Magistrate of *Avissawella*.

*Sylvan E. J. Fernando* for the defendant, appellant.

*J. M. Jayamanne* (with him *M. D. H. Jayawardene*) for the plaintiff, respondent.

*Cur. adv. vult.*

January 15, 1942. WIJEYWARDENE J—

This is an action for the maintenance of an illegitimate child.

The applicant stated that the respondent seduced her about a year before the birth of the child and had intercourse with her on several occasions thereafter. She stated that when she became pregnant, her parents arranged to give her in marriage to a man called *Nadoris*, but the respondent informed *Nadoris* about her condition and thus prevented the marriage between her and *Nadoris*. Her parents complained to the Police against the respondent for preventing the marriage and the Police held an inquiry at which the respondent was present. According to the record made by the Police Officer of the statements made by the parties,

the respondent has stated, "It is true that she is pregnant for me." At the trial the applicant gave evidence stating that the respondent was the father of the child and called as her witness the Police Officer who recorded the statement of the respondent at the inquiry held by the Police. The Police Officer testifies to the correctness of the record and stated that the statement was made voluntarily by the respondent. The respondent admitted having made the statement to the Police Officer but said that he was compelled by force to make that statement. The Magistrate has held that the respondent's statement was not made under any compulsion, and I see no reason for disagreeing with the Magistrate.

It was argued in appeal that the statement made by the accused to the Police Officer was not admissible in evidence. If that contention is sound and the evidence in question is rejected the applicant's claim necessarily fails as there would then be no corroborative evidence as required by section 6 of the Maintenance Ordinance (*Legislative Enactments, Vol. II., Chapter 76*). The Counsel for the appellant relied on *Sinnatangam v. Silva*<sup>1</sup>. That authority has no application to the present case. In the case of *Sinnatangam v. Silva* the applicant sought to corroborate her evidence by a previous statement made by her at an inquiry by the Police on a complaint made to the police that the applicant was taking steps to procure an abortion. It was there held that in view of section 157 of the Evidence Ordinance the statement could not be admitted as the question of paternity was not a fact which the Police were legally competent to investigate at the inquiry held by them.

Here the applicant seeks to corroborate her evidence by a statement made by the respondent to the Police and the admissibility of that statement cannot be affected by the provisions of section 157 of the Evidence Ordinance.

It was also argued that the statement was inadmissible on the ground that it was obnoxious to section 25 of the Evidence Ordinance. I think that contention too it not sustainable. The proceedings under the Maintenance Ordinance are of a civil nature (*Jane Nona v. Van Twest*<sup>2</sup>) and therefore the respondent in a maintenance case cannot be regarded as "a person accused of any offence" within the meaning of section 25 of the Evidence Ordinance.

I would therefore dismiss the appeal with costs.

—◆—  
*Appeal dismissed.*