

1951

Present : Basnayake J.

TURIN, Appellant, and LIYANORA, Respondent

S. C. 520—M. C. Galle, 19,036

Maintenance Ordinance—Illegitimate child—Corroboration of mother's evidence—Section 6.

Where, in an application for maintenance of an illegitimate child, the evidence of the mother is unreliable the question of corroboration does not arise, and the applicant cannot in such a case succeed.

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

G. E. Chitty, with *G. L. L. de Silva*, for the defendant appellant.

No appearance for the applicant respondent.

October 1, 1951. BASNAYAKE J.—

This is an application for maintenance in respect of a two-year old child called Amaradasa. The applicant is the child's mother. The learned Magistrate finds that her evidence is unreliable. He says: "The applicant in cross-examination made many a statement and then in the next breath contradicted herself. She showed that she was not sure of dates. Further she said that Sampson before notice of marriage did not visit her but she was forced to admit that he did visit her." He also observes: "The applicant did not cut a good figure in the witness-box." Despite the unsatisfactory nature of the applicant's evidence he has given her judgment on the ground that her evidence is corroborated by that of her witness, an ex-Village Headman. The ex-headman is not a person of unblemished character. He has admitted that he had been fined Rs. 25 in a case of assault and that he had been sentenced to two years' rigorous imprisonment for causing grievous hurt.

Learned counsel for the appellant submits that where the evidence of the witness who needs corroboration is unreliable the question of corroboration does not arise and the applicant cannot in such a case succeed. Learned counsel's submission in my view is entitled to succeed.

The rule requiring corroboration of the mother's evidence in proceedings for maintenance is thus stated in section 6 of the Maintenance Ordinance:

"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."

What the statute provides is that no order for maintenance of an illegitimate child should be made unless a mother who has given convincing evidence is corroborated in some material particular. If the mother's evidence does not convince the judge the question of corroboration does not arise. It appears from the case of *Le Roux v. Neekling*¹

¹ *Juta (1891-1892)*, p. 247.

that the rule under the Roman-Dutch Law was that the applicant who seeks to fix the paternity of an illegitimate child on a man must clearly prove it and must be corroborated in some material particular. In case of doubt judgment must be given in favour of the defendant. The Maintenance Ordinance has not altered that aspect of the Common Law.

For the above reasons the finding of the trial judge is set aside and the appeal is allowed.

Appeal allowed.
