1972 *Present :* **Deheragoda, J.**

SOLOMON FERNANDO, Defendant-Appellant *and* CHANDRALATHA ABEYSEKERA, Applicant-Respondent

S. C. 237/71—M. C. Colombo 5516/A

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

In an application for maintenance of an illegitimate child under Section 6 of the Maintenance Ordinance, the Magistrate ought in the first instance to analyse the evidence very carefully and arrive at a firm finding as to whether he believed the applicant or the defendant, before looking for independent corroboration of the applicant's evidence. The issue as to corroboration does not present itself for adjudication where the Magistrate is of the view that the applicant's evidence is unreliable.

Turin vs. *Liyanora* (1951) 53 N. L. R. 310 followed.

The entire approach of the Magistrate in regard to the question of paternity of the child is wrong.

APPEAL from an order of the Magistrate's Court, Colombo.

A. H. C. de Silva, with *Kenneth Shinya* and *Andrew Somawansa,* for the Defendant-Appellant.

Mark Fernando for the Applicant-Respondent.

Cur. adv. vult.

September 1, 1972. DEHERAGODA, J.—

The applicant-respondent (hereinafter called the " applicant ") filed this action against the defendant-appellant (hereinafter called the " defendant ") claiming maintenance for her illegitimate child Neranjani born on 5th December 1968, whose father, she alleged, was the defendant. A large volume of evidence had been led both for the applicant and for the defendant, and the case was keenly contested.

The case for the applicant was that in 1967 she was employed as a seamstress in a house where she made the acquaintance of the defendant, who was a frequent visitor there, and who was in affluent circumstances being the owner of a liquor shop at Moratuwa. He had promised to marry the applicant, and on 16th September 1967 he had found for her a room in a house at Dehiwala where the applicant lived as his mistress for about six months. Her board and lodging were paid for by the defendant. On 4th March, 1968 they left this house and the defendant took her to a house at Rawatawatta, Moratuwa, where he was living with his sister. About ten days after she went to live there she realised that she was pregnant. His sister resented to his having brought the applicant into this house and within sixteen days of her having been brought there he had to take her

to the house of one Alice Gunasekera who was known to the applicant. She stayed there for a few days and on 8th April 1968 she went to reside in the house of one Danawathie Siriwardena at Attidiya. Here too, according to the applicant, her board and lodging were paid for by the defendant. As the date of her confinement was drawing near she was taken by the defendant to an annexe at Hospital Road, Kalubowila, which he had rented out for her. She stayed there till she gave birth to Neranjani on 5th December 1968. She even said that the defendant took her up to the Kalubowila Hospital for her confinement, but that it was someone else who admitted her. After the birth of her child she went to reside again with Danawathie Siriwardena. She added that the defendant made a payment of Rs. 100 on 10th January 1969, after the birth of the child, but refused to maintain the child thereafter. She alleged that after this case was filed the defendant made an attempt to make her withdraw the case by offering her Rs. 25,000, provided she married a man of his choice, namely, Jayasumana Perera who is a son of Danawathie Siriwardena. She married Jayasumana Perera expecting the defendant to honour his promise, but he failed to do so.

The case for the defendent is that he was sexually intimate with the applicant when he was living with her in a room in a house at Dehiwala, but ceased to have anything to do with her after January 1968 when he discovered that the applicant was a woman of loose moral character. His case is that he was not sexually intimate with her at or about the time the child Neranjani could have been conceived.

The applicant was subject to very severe cross-examination, especially in regard to her past, and allegations were made that she had had illegitimate children earlier, which she denied. She was also asked whether, prior to meeting the defendant, she had lived with one Raja and with one Albert Appuhamy, all of which she denied. Questions were put to her also to the effect that even while she was living with the defendant certain other people, among them defendant's relatives, used to visit her and that when the defendant came to know of these visits he broke off all relationships with her in January 1968. All these had been denied by her and they remain, so far as her evidence goes, mere suggestions. The defendant led evidence of more than one witness to establish the allegation that the applicant was living with Raja and Albert Appuhamy before she met the defendant, and that she had at least one illegitimate child by one of them.

The defendant himself gave evidence to the effect that he had never promised to marry the applicant, that he had at no stage lived in his sister's house at Rawatawatta with the applicant,

and that even in the house at Dehiwala he found her associating with other men and he therefore stopped his visits completely somewhere in January 1968. He denied that he offered Rs. 25,000 as an inducement to the applicant to withdraw this case; he denied that he had paid or agreed to pay the applicant any money as maintenance for the illegitimate child.

The learned Magistrate, while ordering the payment of maintenance at the rate of Rs. 25 per month, in the course of his order stated that he did not "accept as the truth the entire evidence of the applicant" and that she had not spoken the truth with regard to the period prior to her meeting the defendant. He accepted the evidence of the witnesses who had spoken to the applicant's relationships with Raja and Albert Appuhamy prior to her meeting the defendant; and apparently for this reason he held that the applicant was "a woman with a chequered past whose morals were rather on the loose side." He therefore hesitated to accept the evidence of the applicant "unless there is strong independent corroboration". He sought to find this corroboration in two statements said to have been made to the Police by the defendant on 18th April 1968 and 28th June 1968, marked P3 and P11. P3 was a statement said to have been made by the defendant when the applicant had come to his liquor shop and created a scene. In this statement he is recorded as having said, among other things, that he was keeping the applicant as his mistress "for the last six months". The defendant in his evidence has stated that he made this statement in Sinhala but it was recorded in English, and what he said was that he was keeping the applicant as his mistress for a period of six months. The learned Magistrate treated this document as an admission that the defendant had kept the applicant as his mistress for a period of six months ending 18th April 1968, and that, therefore, Neranjani could have been conceived during that period. He also held against the defendant that he had not denied the paternity of Neranjani in that statement. In the statement P11 made on 28th June 1968 the defendant is alleged to have said that he had kept the applicant as his mistress and had given her up "for the last two months" as she was of bad character. The learned Magistrate treated this document too as an admission that the defendant was living with the applicant during the period she could have conceived Neranjani.

Learned counsel for the defendant submits that the entire approach to the case by the learned Magistrate is wrong because he has shown a reluctance to accept the evidence of the applicant when he said that he hesitated to accept her evidence unless he found strong independent corroboration. He argues that in the absence of a finding on his part that he had in the first instance

accepted the evidence of the applicant he could not look for corroboration. He cites in support the case of *Turin vs. Liyanora* (53 N.L.R. 310) where Basnayake J. referring to section 6 of the Maintenance Ordinance says that if the mother's evidence does not convince the judge the question of corroboration does not arise. He adds: "It appears from the case of *Le Roux vs. Neethling,* 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."

There does not appear to be a firm finding by the learned Magistrate on the oral evidence led for the applicant and for the defendant, especially in relation to the period during which the applicant could have conceived the child Neranjani, born on 5th December 1968. The relevant period, according to the applicant's evidence, was some time just before she left the room in a house at Dehiwala and was taken by the defendant to his sister's house at Rawatawatta, Moratuwa, on 4th March 1968 or immediately thereafter. The defendant totally denied that he ever lived with the applicant in his sister's house at Rawatawatta between 4th and 20th March 1968.

It was incumbent on the learned Magistrate to analyse this oral evidence very carefully and arrive at a firm finding as to whether he believed the applicant or the defendant, before looking for independent corroboration of the applicant's evidence. Instead of doing so, the learned Magistrate has devoted a large portion of his order to considering the contents of documents P3 and P 11 and has arrived at a finding that the defendant provided the corroboration by the admissions contained in these two documents.

Arguments and counter-arguments have been advanced before me both on the evidentiary value of these two documents and their admissibility without proper proof, but in view of the conclusion I have arrived at, it would not be necessary for me to consider these legal arguments. I agree with learned counsel for the defendant that the entire approach of the learned Magistrate to the question of the paternity of the child Neranjani is wrong. I therefore set aside the order for maintenance made by him and send the case back for a fresh inquiry before another Magistrate.

I make no order for costs of this appeal.

Appeal allowed.