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*Present: Dalton J.*SINNATANGAM *v.* DE SILVA.502—*P. C. Batticaloa, 19,876.**Maintenance—Corroboration—Applicant's statement before an Inspector—Evidence Ordinance, s. 157.*

Where it was sought to corroborate the evidence of an applicant in maintenance proceedings by proof of a statement made by her to an Inspector of Police, who was inquiring into a charge against the applicant of an alleged attempt at abortion.

Held, that the statement did not amount to a sufficient corroboration of the applicant's evidence as it was not a material question at the inquiry to ascertain if the respondent was the father of the child.

A PPEAL from an order for maintenance made by the Police Magistrate of Batticaloa. The facts appear from the judgment.

Cholsy, for appellant.

H. V. Perera, for respondent.

September 7, 1926. DALTON J.—

This appeal raises a question under the Maintenance Ordinance, 1889. The appellant, an unmarried girl of 22 years of age, is the applicant in the Court below. She claimed from the defendant maintenance for her child, of whom she alleged defendant was the father.

Both applicant and defendant gave evidence, and as between these two, the Magistrate states he would prefer to accept the evidence of the applicant. Having regard to the evidence and the admissions of the defendant, the Magistrate states he is certainly deficient in the sense of morality so far as women are concerned.

In view of the provisions of section 7 of the Ordinance, however, he quite properly has to look further than the story of the woman and must be satisfied that there is corroboration of her story that respondent is the father of her child in some material particular in other evidence. This corroboration he states he is unable to find, and therefore he dismisses the application.

For the appellant it is urged that corroboration is to be found in other evidence led on her behalf. There is certainly most definite corroboration in the evidence of the old woman Nachan, with whom

the girl lived during her mother's absence, but the Magistrate states that he cannot rely on this evidence, for the reasons he gives, to find corroboration in it of the evidence of applicant. The evidence of her mother has also been adversely criticised by the Magistrate. No doubt, as he states, she is a highly interested witness, but the evidence must not be rejected for that reason alone, for it is the mother who would most likely receive the confidences of her daughter, and have the best opportunity of giving evidence as to her associates and actions. It is suggested that that interest is the principal reason why the mother's evidence has been rejected, but I do not think the Magistrate's reasons support that suggestion. He would seem to have weighed the mother's evidence carefully, having regard to the circumstances deposed to, the probabilities of the case, and the personal interest which the mother naturally has in her daughter. The mother states that during the continuance of the alleged intimacy between her daughter and defendant, the former admitted to her mother that she was pregnant by the defendant. There is no statement in the evidence of applicant herself that she ever made any such confession to her mother; this may be due to the fact that according to her story her mother saw the defendant coming to their house, and must therefore presumably have known for what purpose he came without being told. The Magistrate, however, has come to the conclusion that the mother did not see accused coming to the house after her return to Batticaloa for the reasons he gives, and therefore he rejects the evidence of both mother and daughter on this point. Having regard to all the circumstances I cannot say the Magistrate was wrong in his conclusion that he could not find satisfactory corroboration of the applicant's story in the evidence of her mother.

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Counsel for appellant then argued that corroboration was to be found in the evidence of the Inspector of Police. A communication was sent to this witness about October, 1925, that the applicant was pregnant and was going to bring about an abortion. From whom this communication came does not appear, nor is there any evidence to show that any charge in that respect was made against the defendant. He had apparently left Batticaloa two or three months before this. In the course of his duty the Inspector inquired into the matter and questioned the applicant and her mother, and applicant admitted she was pregnant. She went further and informed the Inspector that defendant was responsible for her condition. This statement to the Inspector it is urged is corroboration of her story, relying on the decision in *Ponnammah v. Seenitamby*.¹ By section 157 of the Evidence Ordinance it is enacted that, to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact before any

¹ (1921) 22 N. L. R. 395.

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authority legally competent to investigate the fact, may be proved. In the case cited it was regarded as accepted law that section 157 applied to the provisions of section 7 of the Maintenance Ordinance. There is no doubt about the legal competence of the Inspector of Police to investigate the commission of or an alleged attempt or intention to commit the offence of procuring an abortion. The facts here, however, differ on a most material point from the facts in the case cited. There it was alleged that the respondent, who was alleged to be the father of the child, was a party to the attempt. Here there is nothing of the kind. So far as the information given to the Inspector is concerned, it seems to me to have been in no way a material question in the inquiry to ascertain if the respondent was the father of the child. Under those circumstances the statement of the applicant to the Inspector alleging that respondent was the father is not a statement which is admissible in evidence under the provisions of section 157. It is also to be noted that it was made some months after the discontinuance of the alleged intercourse between the parties. If the statement is not admissible under section 157, it seems to me it is not admissible at all. Counsel for appellant has at any rate not been able to refer me to any other authority for its acceptance. There is therefore no corroboration in the evidence of the Inspector of the applicant's story that the respondent is the father of the child.

Lastly, the two letters A1 and D1 have been referred to as supplying the necessary corroboration. These are not referred to by the Magistrate, although I think it is fairly clear from his view of the case that he would not have neglected reference to them had he thought they afforded any evidence of corroboration. D1 is a letter written to applicant's brother after he had apparently received an anonymous letter defaming him. What exactly is the charge made against him does not appear, but there is some reason for supposing that, as Counsel for appellant suggests, he had been charged with misconducting himself with applicant. If that is so, the letter which is dated October 1, 1925, about the time of the Inspector's inquiry, denies the charge, and states it is the work of an enemy. Letter A1, dated March 15, 1926, after these proceedings had commenced against respondent, is also written in quite friendly terms to applicant's brother. It is written in reply to a letter from the brother which is not produced. At this time respondent was at Badulla. He states: "It is a great pity to see that you still adhere to a wrong notion about me. I would like to see you in Badulla some day next week. Could you come? I shall pay the bus charges." There was practically no examination of either the brother or the respondent as to the circumstances in which this letter was written, but Counsel for appellant has asked me to infer that respondent wished to see the brother about these maintenance proceedings brought against him.

If that is so, respondent would appear to reiterate his former denial of responsibility. If so, why it is asked should he ask the brother to come to see him and offer to pay his travelling charges. It is a pity that question was not put to the respondent. He seems to have been on friendly terms with the brother, and it is possible it refers to a different matter. At any rate, even if it refers to the maintenance proceedings, it does seem as I stated to reiterate his denial of any misconduct. I am unable to find in either of these letters corroboration of applicant's story in any material particular. As pointed out in *Bandara Menika v. Dingiri Banda* ¹ and in the authorities there cited, corroboration may be by circumstantial evidence, but I cannot see that, having regard to their terms, these letters afford any evidence that respondent is the father of applicant's child, or in any way implicate him.

For these reasons the decision of the Magistrate must be affirmed and the appeal be dismissed.

Appeal dismissed.

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