

1969

*Present : Sirimane, J., and Wijayatilake, J.*

R. PALLITHAMBY, Petitioner, and  
M. M. SAVIRIATHUMMA, Respondent

*S. C. 483/68—Application for leave to appeal in Quazi Tribunal  
Karavaku and Nintavur No. 1936, Board of Quazis  
Appeal No. 602/R*

*Muslim Marriage and Divorce Act (Cap. 115), as amended by Act No. 1 of 1965—  
Sections 2, 47 (1) (c), 48—Liability of a Muslim to maintain his illegitimate  
child—Jurisdiction of a Quazi—Maintenance Ordinance (Cap. 91), s. 2.*

*A Muslim in Ceylon is liable to maintain his illegitimate child.*

Section 47 (1) (c) of the Muslim Marriage and Divorce Act, as amended by section 6 of the amending Act No. 1 of 1965, empowers a Quazi to adjudicate upon a claim for maintenance made on behalf of an illegitimate child when the mother of the child and the person from whom the maintenance is claimed are Muslims. In such a case, section 4 of the Act provides that the jurisdiction exercised by a Quazi is exclusive.

**A**PPPLICATION for leave to appeal from a decision of a Board of Quazis.

*A. A. M. Marleen*, for the respondent-petitioner.

*M. S. M. Nazem*, with *M. Ameen Ismail*, for the applicant-respondent.

*Cur. adv. vult.*

October 28, 1969. SIRIMANE, J.—

It is conceded that the amendments to section 47 (1) (c) of the Muslim Marriage and Divorce Act introduced by section 6 of the Amending Act, No. 1 of 1965, empower a Quazi to inquire and adjudicate upon a claim for maintenance made on behalf of an illegitimate child when the mother of the child and the person from whom maintenance is claimed are Muslims—“*notwithstanding anything in section 2*” of the main Act. Under section 2 the Act was applicable only to Muslim marriages and divorces and other matters connected therewith. Perhaps it may have been better to provide for maintenance for Muslim children born out of wedlock in a separate Act, but the amendment does have the effect of providing for such children despite any limitations in section 2.

In support of the application for leave to appeal, the only ground urged was that a Muslim in Ceylon was not liable to maintain his illegitimate child.

Reliance was placed on statements in Tyabji on Muhammadan Law, 3rd Edition, page 312, where it is said—

“*Muhammadan Law appears to impose no burden upon the natural father of an illegitimate child*”

and in *Outlines of Muhammadan Law* by Fyzee who says at page 185,

“*Under Muhammadan Law a father is under no obligation to support or maintain an illegitimate child ;*”

but the learned author adds immediately afterwards,

“*The Code of Criminal Procedure, section 488 provides that the putative father of an illegitimate child can be ordered to pay a sum not exceeding Rs. 100 per month by way of maintenance.*”

In fact, Tyabji, too, refers to this liability of a Muslim to maintain illegitimate children under the Criminal Procedure Code of India.

Section 2 of our Maintenance Ordinance of 1959 Chapter 91 is in exactly the same terms as section 488 referred to above. So that the same statutory liability as in India is imposed here on a person whether he is a Muslim or not.

Amcer Ali on Mohammedan Law (6th Edition) says at page 385,

“In case the father wilfully neglects and deserts his children, legitimate or illegitimate, and refuses to maintain them when he has the means, he is liable to punishment at the discretion of the Kazi. Under the Code of Criminal Procedure in force in India, the Magistrate has the jurisdiction to order maintenance in the case of both legitimate and illegitimate children.”

Counsel for the proposed Appellant (the father) conceded that the appellant would be liable in proceedings under the Maintenance Ordinance. Section 48 of Chapter 115 provides that the jurisdiction exercised by a Quazi under section 47 is exclusive, and the applicant (the mother) has sought her remedy in the correct forum.

The application for leave to appeal is refused with costs.

WIJAYATILAKE, J.—I agree.

*Application refused.*

---