

1923
 BISHNU
 PRIYA
 CROWDHU-
 RANI,
In re.

We, therefore, remit the case to the Commissioner of Income Tax in order that he may deal with it in accordance with our judgment, which, as I have already said, confirms his opinion. The assessee will have the costs of the case which we assess at Rs. 150 inclusive of all items.

RICHARDSON J. agreed.

A. P. B.

CRIMINAL REVISION.

Before C. C. Ghose and Cuning JJ.

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 May 15.

KRIPAL SING

v.

EMPEROR.*

Kirpan—Carrying kirpans, exceeding nine inches in length, in the town of Calcutta—Notification of Commissioner of Police, 21st October 1922—Calcutta Police Act (Beng. IV of 1966) s. 62A (2) (6).

The carrying of a sword or *kirpan*, exceeding nine inches in length, in the town of Calcutta, is an offence under s. 62A of the Calcutta Police Act.

Quere: whether the carrying of a *kirpan*, more than nine inches long, in Bengal, outside Calcutta, is an offence.

THE petitioner was the mohunt of the Sikh temple in Chittagong. On the 27th April 1923, while going along Nimtola Ghat Street, he was arrested by the police for carrying without license a *kirpan* over 3 feet long, and placed on trial before the Second Presidency Magistrate, charged under s. 62A of the Calcutta Police

* Criminal Motion, No. 491 of 1923, against the order of E. H. Keays, Second Presidency Magistrate, dated May 2, 1923.

Act.† He was convicted and sentenced, on the 2nd May, to a fine of one rupee, and the *kirpan* was ordered to be confiscated. He thereupon moved the High Court to set aside the conviction and sentence as illegal. It appeared from a letter of the Government of Bengal to the Commissioner of Police that the Government had no objection to Sikhs carrying, in Calcutta and the suburbs, a *kirpan* not exceeding nine inches in length. On the 21st October 1922 the Commissioner of Police issued a notification prohibiting the carrying of daggers, spears, swords, bludgeons, *lathis*, guns or other offensive weapons, in any public place in the town and suburbs of Calcutta, between the 1st November 1922 and 31st October 1923, with certain exceptions.

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Mr. B. C. Chatterjee (with him *Babu Paresh Chandra Sen*), for the petitioner. The Bengal Government has not prohibited the carrying of swords or *kirpans* under Schedule II of the Indian Arms Act Rules, 1920.* S. 62A of the Calcutta Police Act must, therefore, be strictly construed. The notification of the Commissioner thereunder does not mention *kirpans*, and they should, therefore,

† Act IV of 1866 (B. C.), s. 62A (2). The Commissioner of Police may also, subject to the control of the Local Government, whenever, and for such time as, he may consider it necessary to do so for the preservation of the public peace or public safety, by notification publicly promulgated or addressed to individuals, prohibit—

(i) the carrying of swords, spears, bludgeons, guns or other offensive weapons in a public place ;

(6) Whoever contravenes any direction, order, or prohibition lawfully given or made under this section, shall be liable—

(ii) if the prohibition were made under sub-section (2).....to imprisonment, with or without hard labour, for a term which may extend to one month, or to fine which may extend to one hundred rupees, or to both.

* SCHEDULE II, ARMS ACT RULES, 1920.

Arms, ammunition and military stores excluded.

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be held as excluded from its operation. The letter of the Bengal Government has not the force of law, and to have that effect should have been incorporated in the notification. A *kirpan* is not a "sword" within the notification. Read with the above letter a *kirpan*, with a blade of nine inches, would be a "dagger", which is also mentioned in the notification. It is part of a Sikh's religious obligation to carry a *kirpan*, and the Queen's Proclamation of 1858 would render any prohibition to carry it *ultra vires*. If it be said that there is no prohibition, except as to the length of a *kirpan*, the Sikhs should have received notice to that effect.

Within the area specified in the first column of the subjoined table, the arms . . . described in the second column are excluded from the operation of such prohibitions and directions contained in the Act as are indicated in the third column.

THE TABLE.

Area.	Arms....	Prohibitions or directions.
British India (except)	All arms except.....	All; provided that the Lieutenant-Governor may, by notification in the local official gazette, retain all or any of the prohibitions or directions contained in the Act in respect of any arms in the case of any class of persons, or of any specified area.

GHOSE AND CUMING JJ. This is an application on behalf of one Mohunt Kripal Singh who has been convicted under section 62A of the Calcutta Police Act and fined Re. 1, and whose *kirpan* has been ordered to be confiscated by the Second Presidency Magistrate of Calcutta.

It appears that, on the 27th April 1923, the applicant was arrested by the police on the allegation that he was carrying a sword without any license or permission from the Commissioner of Police, Calcutta. The applicant protested that he was carrying a *kirpan* which, according to him, was a part of the religious creed of every member of the Sikh community. On the 2nd May 1923 the applicant was convicted as mentioned above.

On behalf of the applicant it has been contended before us that the learned Magistrate has entirely ignored the fact that carrying a *kirpan* is part of the religious obligation of every member of the Sikh community, and that any notification issued under any Act, interfering with the religious beliefs and practices of a sect or community, is *ultra vires* by reason of the Proclamation of Her late Gracious Majesty Queen Victoria, made in 1858.

The weapon, which was ordered to be confiscated, has been shown to us. It is more than three feet long, and the shape thereof is that of a sword. It is in fact, as the Magistrate remarked, a rusty old sword with a blunt edge.

Mr. B. C. Chatterjee, on behalf of the applicant, has claimed that according to the dictates of the Sikh religion the carrying of a *kirpan* is an obligation on every member of the Sikh community. Mr. Chatterjee has also argued that, on a proper interpretation of the Indian Arms Act, 1920, and of the Rules thereunder, it should be held that the carrying of a *kirpan* in Bengal is not an offence, and that as a matter of fact *kirpans* are exempted from all prohibitions and directions of the Arms Act. He has further argued that it was incumbent upon the Government, if it intended to prohibit the carrying of *kirpans* in Calcutta, to prohibit the same specifically and in so

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many words, and inasmuch as that had not been done the applicant had not committed any offence whatsoever.

Now it may be admitted that the tenth Guru of the Sikhs, Guru Gobind Singh, declared that "of material things the Sikhs should devote their finite energies to steel alone," and that the carrying of a *kirpan* is one of the teachings of the tenth Guru, and that since 1690 the carrying of a *kirpan* has been in general use among the members of the Sikh community. The origin of the carrying of *kirpans*, together with the wearing of four articles the names of which begin with a K. and the story of the baptism by the tenth Guru of his chosen five Sikhs by water stirred with a dagger, and the transmutation of the Khalsa, *i.e.*, the saved or liberated into singhas or lions, is one of the most fascinating chapters of Sikh history. But, so far as this case is concerned, however fascinating or interesting may be the history referred to above, the short point that we have to consider is whether or not, under the provisions of the Calcutta Police Act, the learned Magistrate was right in making the order which he did. Mr. Chatterjee has referred to the Proclamation of 1858. In our opinion the words of the Proclamation of Queen Victoria have no real bearing on the question that we have to decide, but it may be pointed out that the particular passage in the Proclamation, to which Mr. Chatterjee referred, is preceded by a very important sentence which really gives the key to the meaning of what follows in the Proclamation.

Now, under the provisions of the Calcutta Police Act, it appears that a notification was issued on the 21st October 1922, by which the Commissioner of Police prohibited the carrying of daggers, spears, swords, bludgeons, *lathis* or guns or other offensive

weapons in any public place, in the town or suburbs of Calcutta, between the 1st November 1922 and the 31st October 1923, provided that the prohibition shall not extend to persons exempted under Schedule I of the Indian Arms Act Rules, 1920, or holders of permits granted by the Commissioner of Police in a prescribed form, or to weapons covered by a license under the Indian Arms Act. It appears further that the exemptions from the prohibitions and directions of the Indian Arms Act, as prescribed in Schedule II of the Indian Arms Act Rules, 1920, are subject to any restrictions that may be imposed by Local Governments. Mr. Chatterjee has drawn our attention to the fact that the Government of Bengal has decided that, so far as the town of Calcutta is concerned, the carrying of *kirpans*, the blade of which is more than nine inches, should not be allowed, and that the prohibitory orders issued under the provisions of section 62A of the Calcutta Police Act should apply to *kirpans*, the blade of which is more than nine inches long.

As remarked above, we are only concerned in this case with the question of the prohibition such as it is in Calcutta, and we desire to guard ourselves from being understood to express any opinion whatsoever as to whether the carrying of a *kirpan* (more than nine inches long) outside Calcutta and in Bengal, is or is not an offence. There can be no doubt that, under section 62A of the Calcutta Police Act, read with the notification issued on the 21st October 1922, the carrying of the sword which has been produced before us, is certainly prohibited. It follows, therefore, that no one, unless otherwise exempted, is allowed to carry a sword in Calcutta by calling it a *kirpan* if the weapon itself is more than nine inches long. In our opinion, therefore, the

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weapon which has been produced before us does come within the purview of the prohibition of weapons mentioned in the notification issued under the provisions of section 62A of the Calcutta Police Act. We do not wish to follow the learned counsel for the applicant into a minute discussion of the Indian Arms Act Rules because in our opinion no useful purpose will be served thereby. The relevant section, in our opinion, is section 62A of the Calcutta Police Act. We have in the present case nothing whatever to do with the larger and wider question of the legality or otherwise of carrying *kirpans* more than nine inches long outside the limits of the Presidency town of Calcutta.

It is argued, however, by Mr. Chatterjee that inasmuch as the Government of Bengal had not notified to the members of the Sikh community that the use of *kirpans*, the blade of which is more than nine inches long, is prohibited, the applicant's conviction and sentence should be set aside. Now, to start with, it has not been shown to us that it is sufficient, in order to get round the provisions of the law in this behalf, by merely calling a sword, which is more than three feet long, a *kirpan*. Further, we think that the terms of the notification of the 21st October 1922, were given sufficient publicity in Calcutta, and that, therefore, there is no substance whatsoever in the last argument addressed on behalf of the applicant.

The result, therefore, is that in our opinion the order of the learned Magistrate is right, and that this application must be dismissed.

E. H. M.

Application rejected.