

kirpan and nothing more the manufacture would be no offence. It is, however, a *kirpan* possessed or carried by a Sikh and in the nature of things it is as impossible to manufacture this arm as it is impossible to manufacture a *katyar* used in a marriage procession and, therefore, the exemption does not cover or include manufacture by a Sikh or any other person, for the wording of the notification shows that it is only when the arm has assumed its final form and has become a *kirpan* that the exemption begins to operate.

A. R.

Appeal accepted.

REVISIONAL CRIMINAL.

Before Mr. Justice Martineau.

ARJAN MAL AND OTHERS—*Petitioners,*

versus

THE CROWN—*Respondent.*

Criminal Revision No. 992 of 1922.

Indian Penal Code, sections 176/109 and 189—whether a conviction under section 189 can be altered to a conviction under sections 176/109 in appeal.

The petitioners were charged with, and convicted of, an offence under section 189, Indian Penal Code, the allegation being that they had held out threats to a Chaukidar for the purpose of inducing him to refrain from reporting a certain boy's death by drowning. On appeal the District Magistrate held that there was no offence under section 189 as a village Chaukidar was not a public servant within the meaning of section 21 (*eighth*). He found, however, that the petitioners and the *Lambardars* (who had been convicted under section 176 in a separate trial) had entered into a conspiracy in pursuance of which the latter omitted to report the boy's death. He accordingly altered the convictions of the petitioners to convictions for an offence under sections 176/109, Indian Penal Code.

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Held, that the offence under sections 176/109, Indian Penal Code, being of a different nature and constituted by an entirely different set of facts from one under section 189, and the petitioners not having been called upon in the trial Court to answer a charge under sections 176/109, the District Magistrate was not justified in altering the convictions under section 189 to convictions under sections 176/109 in appeal.

Revision from the order of G. C. Hilton, Esquire, District Magistrate, Ludhiana, dated the 22nd June 1922, modifying that of Sayyad Abbas Hussain, Magistrate, 2nd Class, Ludhiana, dated the 6th April 1922, convicting the petitioners.

ZAFAR ULLAH KHAN, for Niaz Muhammad, for Petitioners.

MEHR CHAND MAHAJAN, for the Government Advocate, for Respondent.

MARTINEAU J.—This case is connected with a case which forms the subject of Criminal Revision No. 993 of 1922. The latter case relates to a conviction of some *Lambardars* of Dhapali in the Ludhiana District for an offence under section 176, Indian Penal Code, which consisted in their omitting to give information to the police of the death by drowning of a boy named Harman Singh. The petitioners in the present case were charged with, and convicted of, an offence under section 189, Indian Penal Code, the allegation being that they held out threats to Wazira, *Chaukidar*, for the purpose of inducing him to refrain from reporting the deceased boy's death to the police. On appeal the District Magistrate held that there was no offence under section 189, Indian Penal Code, as a village *Chaukidar* was not an officer of Government and was therefore not a public servant within the meaning of section 21 (*eighth*). He found that the petitioners and the *Lambardars* had entered into a conspiracy in pursuance of which the latter omitted to report Harman Singh's death, and he accordingly altered the convictions to convictions under sections 176/109, Indian Penal Code. The offence, which the petitioners are alleged to have committed under sections 176/109, Indian Penal Code, by entering into a conspiracy with the *lambardars* not to report the boy's death is one of a different nature from the offence under section 189 with which they had been charged and is constituted

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by an entirely different set of facts, and as the petitioners were not called upon in the trial Court to answer a charge of an offence under sections 176/109 I do not think that the District Magistrate was justified in appeal in altering the convictions to convictions under those sections. A further reason for not altering the findings would be that a prosecution for an offence under sections 176/109, Indian Penal Code, requires sanction under section 195 of the Criminal Procedure Code, which is not necessary for a prosecution for an offence under section 189, Indian Penal Code.

It is argued for the Crown that the convictions for an offence under section 189, Indian Penal Code, should have been maintained, but I think that the District Magistrate's view that no offence under that section had been committed was correct.

I accordingly accept this application, set aside the convictions and sentences, and acquit the petitioners, and direct that the fines, if paid, be refunded.

A. R.

Revision accepted.
