

Appellate Criminal.

Before Mr. Justice Scott-Smith and Mr. Justice Harrison.

THE CROWN—*Appellant,*

versus

BASTA SINGH,—*Respondent.*

1922

Oct. 30.

Criminal Appeal No. 672 of 1922.

*Indian Arms Act, XI of 1878, sections 5 and 19 (a) and rules—
Manufacture of kirpans by a Sikh without a license.*

B. S., a Sikh, was convicted by a Magistrate under Section 19 (a) of the Indian Arms Act, for having manufactured and sold *kirpans* without a license. The Sessions Judge acquitted him having regard to the entry in the second schedule annexed to the Indian Arms Rules, which showed that *kirpans* possessed or carried by *Sikhs* are excluded from the operation of all the prohibitions and directions contained in the Arms Act.

Held, that the exemption was not applicable to the accused-respondent who was therefore guilty of an offence under section 5 of the Indian Arms Act, punishable under section 19 (a).

Appeal from the order of A. H. Parker, Esquire, Sessions Judge, Ambala, dated the 17th June 1922, reversing that of P. L. Chandu Lal, Esquire, Magistrate, 1st Class, Rupar, District Ambala, dated the 12th May 1922, and acquitting the accused.

CARDEN NOAD, Assistant Legal Remembrancer,
for Appellant.

G. S. SALARIYA, for Respondent.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—This is an appeal by the Local Government from the order of the Sessions Judge of Ambala setting aside the conviction of Basta Singh, who was convicted of an offence under section 19 (a) of the Indian Arms Act. Basta Singh is a Sikh and was convicted by a Magistrate of having manufactured and sold *kirpans* without a license. The learned Sessions Judge set aside the conviction and acquitted him having regard to the entry in the second schedule annexed to the Indian Arms Rules, which shows that *kirpans*

1922

THE CROWN

v.

BASTA SINGH.

possessed or carried by Sikhs are excluded from the operation of all the prohibitions and directions contained in the Arms Act.

In appeal it is contended on behalf of the Government that the exemption only applies to *kirpans* actually in existence and possessed or carried by Sikhs and not to the manufacture of *kirpans* by Sikhs. Mr. G. S. Salariya, on the other hand, who appeared for Basta Singh, urged that the decision of the learned Sessions Judge was correct, and that the entry in the third column of the second schedule showed that *kirpans* possessed by Sikhs were excluded from all the prohibitions contained in the Act, and that this included the prohibition as to manufacture contained in section 5.

Schedule I to the Indian Arms Rules gives a list of persons exempted from certain prohibitions and directions contained in the Act, whereas Schedule II contains a list of Arms, Ammunition and Military stores which are excluded from the operation of certain prohibitions and directions contained in the Act. Sikhs as such are not exempted under Schedule I, and it is necessary to examine what the exemption upon which Basta Singh relies actually is. The arms excluded from the prohibitions and directions contained in the Act are "*kirpans* possessed or carried by Sikhs." This in my opinion clearly refers to *kirpans* actually in existence and in the possession of or carried by Sikhs. In other words, a Sikh can possess or carry a *kirpan* without a license. Further, he is not prevented by any provision in the Arms Act from dealing with a *kirpan* which he possesses in any way he likes. A Sikh, however, is not in my opinion exempted by the entry in Schedule II from the operation of the prohibition as to manufacture contained in section 5 of the Act. If Government had intended so to exempt him, it would have done so by an entry in Schedule I. The exemption extends to existing arms only, whereas counsel for the respondent wishes to make it applicable to a class of persons as well. I am unable to agree with his interpretation of the law in this respect. I agree that in the view of the law which I take it is meaningless to exclude from the operations of the prohibition in section 5 an existing *kirpan*, because you cannot manufacture what already

is in existence. But the same applies to the first entry in Schedule III.

I would, therefore, accept the appeal and restore the order of the first Court convicting Basta Singh of an offence under section 19 (a) of the Indian Arms Act. As there was a reasonable doubt as to the interpretation of the law, I think a heavy sentence is not required in the present case. Basta Singh has already undergone more than a month's rigorous imprisonment and I would, therefore, sentence him to the term of imprisonment already undergone and would remit the fine.

HARRISON J.—I agree entirely with the view taken by my learned brother. Before the exemption can operate in a case such as this the arm in question must conform to the description given in the second column of the schedule, that is to say, it must both be a *karpan* and must be possessed or carried by a Sikh. To take an analogy from an exemption, which occurs earlier in the same schedule "*katyars* used in Mahratta marriage processions" are exempted from all prohibitions. If a man were to be prosecuted for manufacturing *katyars* without a license, it would be no valid defence to urge and prove that they were intended to be used in such marriage processions, for, at the time the offence was committed, the article in question would not come within the four corners of the definition. When the use to which the arm is to be put affects the exemption a distinct provision is inserted in the schedule as when "uniform swords, etc., intended to be supplied to persons entitled to wear them" are exempted as such. So here, as soon as the process of manufacture was complete and the arms had reached that stage in their development at which they could be described as *karpan*s no further offence could be committed provided that and as long as they were possessed or carried by Sikhs.

It might be urged that if this be the correct view, it is an offence to manufacture any article which is exempted unconditionally and without any qualification such as a bow and arrow or a toy cannon, but this is not the case. To manufacture an article of this nature is no offence and if the arm exempted in this case were a

1922

THE CROWN
v.
BASTA SINGH.

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.

1922

Oct. 31.