

REVISIONAL CRIMINAL.

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

HARI SINGH AND KISHAN SINGH—Petitioners,

versus

THE CROWN—Respondent.

Criminal Revision No. 1612 of 1923.

Indian Arms Act, XI of 1878, section 19 (f) and Schedule II, 3 (6)—whether the word “ Kirpan ” as used in Schedule II 3 (6) is synonymous with “ Sword.”

Held, that the word “ Kirpan ” as used in Schedule II 3 (6) of the Indian Arms Act, can only be understood and read as meaning a “ Sword ” and therefore a Sikh possessing or wearing one Sword has committed no offence.

Bachittar Singh v. Emperor (1), dissented from.

Application for revision of the order of Lala Chuni Lal, Sessions Judge, Rawalpindi, dated the 24th August 1923, varying that of Khan Abdul Majid Khan, Magistrate, 1st Class, Rawalpindi, dated the 31st July 1923, convicting the petitioners.

NIAMAT RAI, for Petitioners.

PUBLIC PROSECUTOR, for Respondent.

The judgment of the Court was delivered by—

HARRISON J.—Hari Singh and Kishan Singh have both been convicted under section 19 (f) of the Indian Arms Act of being in possession of swords, and their appeal has been dismissed by the Sessions Judge.

The application for revision presented by them has been referred to a Division Bench by Moti Sagar, J. for the decision of the question of whether they are exempt in virtue of Schedule II, 3 (6). They claim

that as Sikhs they are entitled to possess one *kirpan* each, they admit that the two weapons in question are swords, 36 inches in length with curved blades measuring 28 inches, but they contend that the two words "*kirpan*" and "sword" are interchangeable and synonymous, and therefore, the provision of the Arms Act, which forbids the possession of a sword without a license, does not apply to them as Sikhs so long as they only have one such weapon each.

Counsel for the Crown, on the other hand, has drawn our attention to the fact that both the words "sword" and "*kirpan*" are used in the same Schedule, and he contends that had they been synonymous, one word or the other would have been selected and would have been used throughout. He relies on the judgment delivered by LeRossignol J., and reported as *Bachittar Singh v. Emperor* (1), in which it was held that there was a difference in the meaning of the two words, that "sword" was the wider and the more comprehensive word and included "*kirpan*", and that a person claiming exemption under the provisions of the Schedule must show that the weapon in question was distinguishable from an ordinary sword and possessed the necessary peculiarities, whatever they might be, which made a certain type or pattern of sword a *kirpan*. Some years have passed since that judgment was delivered, and the Crown lawyers have apparently not yet discovered what are the distinguishing features of a *kirpan*, and counsel who appeared before us was unable to give us any assistance beyond asserting that there was a difference between the meanings of the two words, and that the accused must be held to be guilty until and unless they discover the unknown differences and can explain them to the Court

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and can prove that these differences are to be found in the particular weapons owned by them. This verges in our opinion perilously near to throwing the *onus* of establishing innocence on the accused. If there be such a difference, and it is known or ascertainable, it should be made public in the notification so that the world at large and the Sikhs in particular may know exactly where they stand. It is generally believed that a *kirpan*—or Sikh Sword—is or was a straight weapon with a straight handle, and the miniatures or emblems, which are made for wearing in the *pagri*, are undoubtedly in this shape. but no such distinction is claimed to exist by counsel for the Crown, and it is clear that no limit has been placed on the length of the weapon which the Sikh may wear. In Burma such a limit has been fixed, but beyond the fact that a Sanskrit word is used in the notification as opposed to the English no attempt has been made in the Punjab to explain or define the exact nature of the exempted weapon. In Monier William's Sanskrit Dictionary the word is defined as meaning a sword or sacrificial knife, and so also in Platts' Hindustani Dictionary the word is treated as naturalised into the Urdu language and is shown as meaning a "sword." In the Punjabi Dictionary compiled by Bhai Maya Singh, Member of the Khalsa College Council, a *kirpan* is described as an iron knife kept by Sikhs in their turbans. It has never been contended that the notification refers to this miniature emblem to the exclusion of a weapon too large to wear in a *pagri*. We find in Mr. Macauliffe's classical work on the Sikh Religion at page 95 of Volume V, that the *kirpan* is described as a sword, and the author goes on to explain that the 10th Guru directed his disciples to wear the five outward and visible signs of their religion and also en-

joined on them the practice of arms. It is contended with great force that when he so ordered the wearing of a sword, he can only have meant that it should be a weapon suitable for the purpose of practising arms and not merely a religious emblem, such as was subsequently adopted by many people in order to comply with the letter of the commandment. Counsel for the accused attaches great value to the *communiqué* issued by the Punjab Government on 10th March 1922 directing officers not to interfere with the wearing of swords or *kirpans* by Sikhs, provided certain salutary restrictions are observed. He relies on this to show that whatever the difference may or might be, it is not a difference which Government considered of any practical importance, in that it used both words when issuing the directions. Counsel for the Crown objects that this *communiqué* is not admissible in evidence. It has not, of course, the force of a notification under the Arms Act, and as giving the opinion of the Government or any individual Government officer it is not admissible but as showing the action taken by Government for however long or short a time it does throw light on the position and as such is, in our opinion, admissible.

It is established, therefore, that the original commandment of the Guru directed his followers to wear swords and to practise arms. The word used for describing the sword, was *kirpan*, and may have been so selected because it began with a "k". It is not known whether the *kirpan* at that time was of a recognised shape or size. In Sanskrit and Urdu the word means "sword". There is popularly supposed to be a distinction in that a *kirpan* is a sword of a peculiar shape, and this distinction, if it really exists, has hitherto baffled all definition.

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Until Government in a notification qualifies the word as used in the Schedule by fixing the length or describing the shape or both the word can only be understood and read as meaning a sword, and, therefore, a Sikh possessing or wearing one sword has committed no offence. We accept the application and acquit Hari Singh and Kishan Singh.

A. R.

Revision accepted.

APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Martineau.

GOPAL SINGH AND ANOTHER (PLAINTIFFS)

Appellants

versus

MOOL RAJ AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 1522 of 1920.

Custom—Pre-emption—Gujranwala—Business quarter of recent growth outside the walls of the town—onus probandi.

Held that the plaintiffs had failed to prove the existence of a custom of pre-emption in a business quarter of recent growth outside the walls of the town of Gujranwala in which the property in suit was situate, and this could not be presumed even if the custom existed generally in the old town.

Kishan Dial v. 'Ali Bakhsh (1), *Umar Bakhsh v. 'Abdul Karim* (2), and *Allah Ditta v. Muhammad Nazir* (3), followed.

First appeal from the decree of Mir Ibadullah, Senior Subordinate Judge, Gujranwala, dated the 27th April 1920, decreeing the plaintiffs' claim in part.

(1) 87 P. R. 1890.

(2) 70 P. R. 1898.

(3) 84 P. R. 1910.

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