

Daljitsing Fattehsing Vs. Emperor

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Court : Mumbai

Decided On : Jul-20-1929

Reported in : 125Ind.Cas.435

Judge : Patkar and; Wild, JJ.

Appellant : Daljitsing Fattehsing

Respondent : Emperor

Judgement :

Patkar, J.

1. In this case the accused was tried on a charge under Section 19 (a) and (d) of the Indian Arms Act XI of 1878 before the Honorary First Class Magistrate at Bhusawal, and convicted and sentenced to pay a fine of Re. 250. On appeal, the learned Sessions Judge confirmed the conviction and reduced the fine to Rs. 50.

2. The accused, who is a Sikh resident of Delhi, was found in possession of thirty-five kirpans or jambias at Bhusawal. The accused admitted that he had brought them from Delhi and desired to take them in the Nizam's territory for sale and also admitted that he had already sold two kirpans at Bhusawal. Out of the thirty-five kirpans nine kirpans were below nine inches, twenty-three were between nine and nine and-a-half inches, and three were ten inches in length.

3. Under Section 27 of the Indian Arms Act, 1878, the Governor-General in Council may, from time to time, by notification published in the Gazette of India:
- (a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in the Act ; and
 - (b) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.
4. Section 5 of the Indian Arms Act prohibits unlicensed manufacture, conversion and sale of any arms, ammunition or military stores. Section 6 prohibits unlicensed importation and exportation. Section 13 prohibits going armed without a license. Section 14 prohibits unlicensed possession of any cannon or fire arms or any ammunition or military stores.
5. Government of India Notification No. F. 829, dated November 3, 1923, was made under Sections 4, 10, 17 and 27 of the Indian Arms Act. Order 3(1) of the notification, the persons and classes of persons, the arms and ammunition, and the parts of British India specified or described in Schedules I to IV are, respectively, exempted, excluded and withdrawn to the extent and subject to the conditions therein specified from the operation or prohibitions and directions contained in the Act. In Schedule II, in British India except the Punjab, Burma and the Delhi Province all arms except cannons and other fire arms mentioned in the second column are excluded from the operation of all the prohibitions and directions contained in the Act provided, as laid down in the third column, that the Local Government may, by notification in the Local Official Gazette, retain all or any of the prohibitions and directions contained in the Act in respect of any arms, in the case of any class of persons or of any specified area.
6. In Government Notification No. 7228, dated August 2, 1920, the item relating to 'kirpans not exceeding nine inches in length carried by Sikhs' appears in Clause (g) under entry No. 3 relating to all swords. According to that notification kirpans exceeding nine inches in length or kirpans not carried by Sikhs would come under entry No. 3 relating to all swords and will be subject to all the prohibitions

mentioned in column No. 5 and the sale and transport of such kirpans would be prohibited under Sections 5 and 6 of the Indian Arms Act and will be punishable under Clauses (a) and (d) of Section 19 of the Indian Arms Act. It appears, however, that by a subsequent notification No. 1234, dated August 3, 1925, printed at page 2093 of the Bombay Government Gazette, Part I, for the year 1925, Clause (g) relating to 'kirpans not exceeding nine inches in length carried by Sikhs' has been transferred from entry No. 3 relating to all swords and put as Clause (g) under entry No. 2 relating to all arms. The effect of the change in the notification would be that kirpans exceeding nine inches in length and not carried by Sikhs would be subject to the prohibition and direction contained in Section 13 as mentioned in column No. 5 and would, therefore, not be subject to the prohibitions contained in Sections 5 and 6 of the Indian Arms Act. In the Notification of 1920 the kirpans not exceeding nine inches in length carried by Sikhs were included in the exemptions of certain kinds of swords, and this inclusion would indicate that kirpans were swords. In the Notification of 1925, the same item was removed from the exemptions relating to swords and included in the exemptions relating to arms. This change is indicative of the intention of removing kirpans from the category of swords.

7. It is urged on behalf of the Crown that the word 'kirpari' can only be understood and read as meaning a sword, and comes within the definition of sword, and reliance is placed on the decision in *Hari Singh v. Emperor* 86 I C. 37 : 5 Lah. 308 : XI L.J. 265 : A.I.R. 1924 Lah. 600 : 1 L C. 54 : 26 L.J. 661. The weapons in that case were thirty-six inches in length with curved blades measuring twenty-eight inches. The word 'kirpan' would mean a weapon for cutting from its etymological meaning and in Monier Williams' Sanskrit Dictionary the word is defined as meaning a sword or a sacrificial knife. In the present case, out of the thirty-five kirpans in the possession of the accused, in the case of twenty-three the blade is nine and-a-half inches, in the case of three it is ten inches, and in the case of nine weapons it is below nine inches. With regard to the kirpans below nine inches no offence would be committed by the accused as they are exempted from all the prohibitions under the entry No. 2 in the notification. With regard to twenty-six kirpans, which are above nine inches, they will be subject to the prohibition contained in Section 13 of the Indian Arms Act as mentioned in column 5 of the

notification. Kirpans with blades of nine to ten inches cannot, in my opinion, be considered as swords. They may be miniature or model swords, but if it was intended that they should be considered as swords, the entry with regard to kirpans ought' to have been allowed to remain in entry No. 3 as in the notification of 1920, and ought not to have been transferred from entry No. 3 relating to all swords to the entry relating to all arms. The effect of the removal of Clause (g) from entry No. 3 relating to swords and inclusion of Clause (g) relating to kirpans under the heading 'all arms' in entry No. 2 would make kirpans above nine inches in length liable to the prohibition contained only in p. 13. If the kirpans in the present case had been thirty-six inches in length with curved blades measuring twenty-eight inches, as in the Lahore case, it would have been possible to hold that the kirpans with such long blades might be considered as swords, and would come under entry No. 3 and would be subject to all the prohibitions. The notifications relating to the Indian Arms Act imposing a penalty upon the subject must be construed very strictly. If it is intended to impose all the prohibitions contained in the Act on kirpans with blades above nine inches whether carried or not by the Sikhs, the notification must be clear on the point.

8. I think, therefore, that the accused is not guilty of the offence under Section 19(a) and (d) of the Indian Arms Act.

9. I would, therefore, set aside the conviction and sentence of the accused and order the fine, if paid, to be refunded.

10. The order of confiscation is set aside.

Wild, J.

11. The petitioner in this case was convicted under Section 19(a) and (d) of the Indian Arms Act, XI of 1878, in respect of certain kirpans between nine and ten inches in length and the question is whether such kirpans are swords, the selling and transporting of which are prohibited in serial No. 3 of Government Notification of the Bombay Government, Political Department No. 1234 of August 3, 1925. It may be noted that serial No. 3 relates to swords and certain kinds of swords are exempted. Kirpans not exceeding nine inches in length when carried by Sikhs are

excepted in serial No. 2 from the prohibition contained in e. 13 of the Act which relates to going armed without a license and the fact that the last exemption does not appear in serial No. 3 would seem to show that, in the view of the department which issued the notification, kirpans not exceeding nine inches in length are not swords. In the previous Notification No. 7228 of August 2, 1920, as subsequently amended, the exception as to kirpans not exceeding nine inches in length was to be found in serial No. 3 as an exception to swords and it would seem that in 1920 the view of the department was that kirpans exceeding nine inches in length were swords.

12. The word 'sword' is defined in the Concise Oxford Dictionary as an offensive weapon consisting of a long, variously shaped blade for cutting or thrusting, or both, and a hilt with hand-guard. It is evident from the case of *Hari Singh v. Emperor* 86 I C. 37 : 5 L 308 : XI L L.J. 265 : A.I.R. 1924 Lah. 600 :26. L.J. 661, that a kirpan is not an ordinary sword of full size but that the word 'kirpan' also means a small model or miniature sword worn by Sikhs in their turbans. The kirpans in this case were obviously mere model or miniature swords. I do not consider that a miniature sword between nine and ten inches in length including its hilt is an offensive weapon with a long blade as the definition of the sword requires, I am, therefore, of opinion that such a kirpan is not a sword to which all the provisions of the Indian Arms Act apply in accordance with serial No. 3 of the Government Notification of 1925. I, therefore, agree with my learned brother that the conviction in this case should be set aside. I would add that if it is desired that kirpans exceeding nine inches in length should be subject like swords to all the prohibitions of the Indian Arms Act the Notification of 1925 should be amended to make this clear.