

Rex vs Dhyan Singh on 14 August, 1951

Equivalent citations: AIR1952ALL53, AIR 1952 ALLAHABAD 53

ORDER

P.L. Bhargava, J.

1. This is a reference, under Section 438, Criminal P. C., by the learned Sessions Judge of Meerut, made on the application of Dhyan Singh, who was convicted of an offence punishable under Section 19 (f), Arms Act, and sentenced to pay a fine of Rs. 50 or in default of payment of fine to undergo rigorous imprisonment for two months.

2. On 6th September 1948, Section I. Gurdial Singh had recovered three weapons, of which two have been described as swords and one as a knife, from Dhyan Singh's tent in Ghaziabad. Dhyan Singh denied the recovery of the weapons; but the recovery has been duly proved and that fact is no longer disputed.

3. The learned Magistrate held that the knife had a blade only 4" long, so its possession without a license was not an offence. But he found that the possession without a license of the swords recovered was an offence punishable under Section 19 (f), Arms Act. Accordingly, he convicted and sentenced Dhyan Singh as stated above.

4. In the Court of the Session, it was contended on behalf of Dayan Singh that the weapons for the possession of which he had been convicted were kripans and as a Sikh he was entitled to possess them without a license. On his behalf reliance was placed on Rule 17, U. P. Arms Rules and Orders, 1985, which lays down :

"17. Exclusion of Kripans and retired officers' swords : (1) No notification issued under the proviso to entry I of Schedule II will affect the exclusion from the provisions of the Act granted by that Schedule in respect of kripans carried or possessed by Sikhs as religious emblems.

(2)....."

In reply it was contended on behalf of the State that if no number was fixed any Sikh might carry as many as a hundred or even more kripans and thus defeat the whole purpose of the Arms Act.

5. The learned Sessions Judge was of the opinion that under the rules as at present framed, a Sikh may carry more than one kripa. The learned Judge relied upon a decision of the Bombay High Court in Emperor v. Daljit Singh Fateh Singh, 82 Bom. L. R. 106. It was pointed out that in that case 35 kripans had been recovered from the possession of one person. Accordingly, the learned Judge

held that Dhyan Singh had been wrongly convicted and he has made this reference and recommended that the conviction of the sentence imposed upon Dhyan Singh be set aside.

6. In his explanation the learned Magistrate, who had tried the case against Dhyan Singh, has submitted that kripa and sword are synonymous and interchangeable terms. A Sikh is entitled to carry only one kripa or sword as a religious emblem. The history of the Sikh religion does not show that a Sikh is entitled to or required to wear or carry more than one kripa or sword. The Bombay case was distinguishable because in that case the question was whether a Sikh was entitled to carry one or more swords of a particular size and the answer to that question depended upon the interpretation of the relevant notifications issued by the Bombay Government.

7. In support of the reference learned counsel for Dhyan Singh has repeated before me the same arguments which were put forward in the Court of Session. He has also invited my attention to Explanation I appended to Article 25 of the Constitution of India, which says :

"The wearing and carrying of Kripas shall be deemed to be included in the profession of the Sikh religion."

The reference is opposed on behalf of the State and the learned Government Advocate has contended that all kripa may be described as swords but all swords cannot be described as kripas; that the swords recovered from the possession of Dhyan Singh having regard to their size and shape were really swords and they could not be described as kripas; and that, in any case, Dhyan Singh was not entitled to possess more than one kripa.

8. Rule 17 of the U. P, Arms Rules and Orders, 1935, which has been quoted above, exempts from the operation of the Arms Act kripas carried or possessed by Sikhs as a religious emblem. The same idea is conveyed by the Explanation I to Article 25 of the Constitution.

9. Dhyan Singh is admittedly a Sikh and as such he is entitled to carry and possess a kripa. The first question which arises for consideration in this reference is whether the weapons recovered from the possession of Dhyan Singh were kripas, which a Sikh is entitled to carry or possess as a religious emblem. Learned counsel for Dhyan Singh has contended that the words kripa and sword are inter-changeable and synonymous terms and in support of his contention he has relied upon a decision of the Lahore High Court in Hari Singh v Emperor, 5 Lah. 308, where it was held that the word "kripa," as used in Schedule II 3 (vi), 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.

10. My attention has been invited to the life of Guru Govind Singh in the book entitled "The Sikh Religion. Its Gurus, Sacred Writings and Authors" by Max Arthur Macauliffe (Vol. v) (1909 edition). It appears from this book that the Sikh Guru Govind Singh had ordained that the Sikhs must always wear the following articles whose names begin with a "k", namely, kes, kangha, kripa kachh and kara (p. 95). Reference has already been made to Explanation I of Article 25, which says that the wearing and carrying of kripas shall be deemed to be included in the profession of the Sikh religion.

11. According to the Sanskrit-English Dictionary by M. Williams, Boden Professor of Sanskrit in the University of Oxford, the word "kripan" means: 'A sword; a scymitar; a sacrifice knife; a pair of shears or scissors; a dagger.' In Macauliffe's "The Sikh Religion", the word "kripan" has been translated as a 'sword'. In Webster's New International Dictionary (Edn. 2), "sword" has been given the following meaning :

"A weapon having a long and usually sharp-pointed blade with a cutting edge or edges; the general term, including the small sword, repier, saber, scimitar, etc. Such a weapon worn (sometimes displayed) as an item of ceremonial attire, as one of the side arms, as a symbol of one's office or state, etc."

Kripan is a sword worn as a religious emblem.

12. I have not been referred to nor have I been able to find out any text or authority that prescribes the size or shape of the kripans which a Sikh is entitled to wear or carry as a religious emblem. In the Lahore case cited above reference has been made to a Punjabi Dictionary compiled by Bhai Maya Singh, who was a member of the Khalsa College Council, wherein a kripan has been described as an iron knife kept by Sikhs in their turbans. It is a matter of common knowledge that the Sikhs sometimes wear and carry kripans, which they are entitled to wear or carry as a religious emblem, in their turbans; but there is nothing to prevent them from carrying the kripan in any other manner. They may do so, and they are often seen wearing and carrying a kripan attached to a belt tied round their waist. Therefore, a kripan may not necessarily be worn or carried in a turban and may not, therefore, necessarily be of such a size as can be carried in the turban.

13. If, as we have already seen, kripan means a sword and its size or shape has not been prescribed by the Sikh religion, it may be a sword of any size or shape. The contention of the learned Government Advocate that all kripans may be described as swords, while all swords cannot be described as kripans assumes that a kripan is of a particular size or shape, which is different from the size or shape of a sword; but, for the reasons stated above, there is no warrant for such an assumption. Once it is conceded that a kripan and a sword are synonymous terms, a sword of any size or shape, miniature or big, may be worn or carried by a Sikh as a religious emblem. In this view of the matter, the weapons for possession whereof without a license Dhyan Singh has been found guilty and convicted under Section 19 (f), Arms Act can be regarded as kripans.

14. The next question which arises for consideration in this case is whether Dhyan Singh as a Sikh was entitled to possess two kripans or swords for being used as a religious emblem. I have stated above that the Sikh Guru Govind Singh had ordained that every Sikh must carry five visible signs of his profession of the Sikh religion, viz. kes, Kanghi, kripan, kachh and kara. This would indicate that a Sikh can wear and carry only one each of these signs; in other words, he can wear and carry only one kripan.

15. "Emblem", according to Webster's New International Dictionary (Edn 2) vol. II, means ; "a visible sign of an idea; an object, or the figure of an object, symbolizing and suggesting another object, or an idea by natural aptness or by association; as, & balance is an emblem of justice; a

scepter, the emblem of sovereignty. A symbolic object used as a heraldic device or badge."

The term "emblem" also suggests that only one kripān may be used as a symbol of the Sikh religion. For purposes of decoration, a person may wear or carry any number of kripāns but as a religious emblem one would be sufficient.

16. It was pointed out by the learned counsel for Dhyan Singh that in Rule 17 as well as in the Explanation to Article 25 of the Constitution, the word "kripān" has been used in the plural; but, having regard to the construction of the language used in the rule, the use of plural was necessary. The word "kripāns" has been used in relation to Sikhs and emblems. If Rule 17 or Explanation I to Article 25 is interpreted in the manner suggested by the learned counsel for Dhyan Singh, it would lead to absurd results. It could never have been intended that in the name of religion a Sikh should carry any number of kripāns or swords as a religious emblem when one of the Sikh Gurus had ordained that the kripān should be worn only as one of the five emblems; nor could it have been intended that a Sikh should possess without a license any number of arms for the possession of each of which others had to take a license. The only exception provided in the Rules is in favour of the kripān used as a religious emblem. I would further hold that the exception relates to the kripān actually worn or carried and it does not relate to any stock of kripāns, out of which any one may be used as a religious emblem. It is, therefore, not possible to argue that Dhyan Singh might have used any of the two kripāns or swords as a religious emblem.

17. In the Lahore case exemption was claimed and allowed for possessing or wearing only one sword; and it was held that a Sikh possessing one sword committed no offence. In the Bombay case the weapons recovered were nine inches to ten inches in length and their possession in terms of the special wordings of the notifications issued by the Bombay Government was held to be justified. In that case it was held that kripāns with blades of 9 inches to 10 inches could not be considered as swords. It was further clearly indicated in that case that, if the weapons had been of larger size, the position would have been different. In the present case the swords recovered were 3 ft. 2 1/2 "and 3 ft. 4 1/2 inches long; and when brought before me appeared as full-sized swords. That case has, therefore, no bearing on the facts of the present case.

18. In my opinion, therefore, Dhyan Singh as a Sikh was entitled to possess only one sword, and not two swords for being worn and carried as a religious emblem. For the extra sword, he ought to have taken a license; he could not possess the extra sword without a license. Consequently, Dhyan Singh was rightly convicted and sentenced under Section 19 (f), Arms Act. I, therefore, see no reason to interfere either with the conviction or the sentence imposed upon Dhyan Singh. The reference is, accordingly, rejected.