

**Prag Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/462698](http://sooperkanoon.com/462698)

**Court :** Allahabad

**Decided On :** Jun-18-1915

**Reported in :** AIR1915All456(1); 30Ind.Cas.143

**Judge :** Chamier, J.

**Appellant :** Prag

**Respondent :** Emperor

**Judgement :**

**Chamier, J.**

1. The applicant has been convicted under Section 60 of the United Provinces Excise Act of 1910 of having cultivated hemp plants and also of having sold them. He was sentenced by the Magistrate to one month's rigorous imprisonment and to a fine of Rs. 100 or in default to one month's imprisonment more. On appeal the Sessions Judge confirmed the conviction and the sentence of imprisonment, but reduced the fine to Rs. 50. It is contended on behalf of the applicant that the Court had no jurisdiction to entertain the case. Counsel referred to Section 70 of the Act, which provides inter alia that no Magistrate shall take cognizance of an offence punishable under Section 60 except on his own knowledge or suspicion or on the complaint or report of an Excise Officer. This case is said to have been started on the report of an Excise Officer, The report in question was made by the Police Officer in charge of the Cantonment Police Station. Under Section 3 of the Act

'Excise Officer' includes any person invested with powers under Section 10 of the Act. Under Notification No. 576 of July 13th, 1910, all Police Officers in charge of stations, amongst other persons, were invested with the powers specified in Section 50 of the Act in respect of offences punishable under Section 60, Clauses (b), (c), (d), (f) and (i). The conviction in this case was under Clauses (c) and (d). It is therefore, clear that the Police Officer who made the report on which the Magistrate took cognizance of this case was an Excise Officer within the meaning of Section 10. I hold, therefore, that the Magistrate had jurisdiction to take cognizance of the Code. On the merits I have no doubt that the conviction was right. It was clearly proved that the applicant had cultivated, that is to say, had tended and watered at least, if not sown, hemp plants in the Macpherson Park, Allahabad, and also that he sold some plants to two men who were sent into the park by the Police for the purpose of catching him. The applicant has served a considerable portion of the sentence of imprisonment inflicted on him. I do not think it necessary to send him back to prison for a few days. I, therefore, reduce the sentence of imprisonment to the term already undergone by him and he need not surrender to his bail. In other respects I dismiss the application. The sentence of fine and of imprisonment in default of payment of fine will stand.