

**thep Singh Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/470482](http://sooperkanoon.com/470482)

**Court :** Allahabad

**Decided On :** Apr-20-1927

**Reported in :** AIR1927All767

**Appellant :** thep Singh

**Respondent :** Emperor

**Judgement :**

**Iqbal Ahmad, J.**

1. This application must, in view of the decision of Umed Singh v. Emperor : AIR1927 All121 , be allowed.

2. The applicant, Thep Singh, was convicted under Section 32(c) of the Forest Act and was sentenced to a fine of Rs. 300 with three months' rigorous imprisonment in default. The case for the prosecution was that the applicant without obtaining permission cleared 4 acres of unmeasured land in a certain protected forest with a view to cultivation, and thus committed an offence punishable under Section 32(c), Forest Act (7 of 1878.) Both the Courts below have held that the applicant did clear 4 acres of land for purposes of cultivation without the permission of the authorities. There is no finding by either of the Courts below that the applicant broke ground in a protected forest. It has been held in the case noted above that

where 'breaking' of ground only is forbidden by a notification issued under the Forest Act, no offence is committed when there has been only 'clearing.'

3. It was argued before the learned Judge that the mere clearing of land is not an offence, but the learned Judge, after observing that he had overruled a similar argument in the case of Umed Singh v. Emperor : AIR1927 All121 decided by him and after referring to certain other decisions overruled the contention of the applicant. It appears that by the time the learned Sessions Judge decided the appeal of the present applicant, Umed Singh's case (i) had not been decided by this Court. As already stated, in view of that decision, the conviction of the appellant cannot be sustained.

4. Accordingly, I allow the application, set aside the conviction of the applicant and direct that the fine, if paid, be refunded to him.

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