

Ashruf Ali Vs. Emperor

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Court : Kolkata

Decided On : Jul-22-1909

Reported in : (1909)ILR36Cal1016

Judge : Lawrence H. Jenkins, C.J. and ;Caspersz, JJ.

Appellant : Ashruf Ali

Respondent : Emperor

Judgement :

Lawrence H. Jenkins, C.J. and Caspersz, J.

1. On the facts we are in agreement with the learned Magistrate, for we hold with him that the accused was in possession of the railway receipt. The question then arises whether that constitutes possession of the opium to which the railway receipt relates, so as to be an offence within Section 9 of the Opium Act '(I of 1878). If unfettered by authority, I should have been disposed to hold that there was no such possession, for, as I read the Act, it relates to possession of opium, and not of a receipt for the opium. However, there is a decision of this Court by which we are bound, Kashi Nath Bania v. Emperor (1905) I.L.R. 32 Calc. 557, in which, on facts not fairly distinguishable from the present, it was held that possession of the railway receipt was possession of opium within the meaning of the section. It appears to me that this decision overlooks the distinction between 'possession' and the 'right to possession.' But there the decision stands, and we

are bound by it. We, therefore, dismiss this appeal.

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