

- 598. *Gour Benode Dutt*, (1873) 21 WR (Cr) 10.
- 599. *Obayya*, (1898) 22 Mad 151.
- 600. *Sivanupandia Thevan*, (1914) 38 Mad 793.
- 601. *Gopalasamy*, (1902) 25 Mad 729.
- 602. *Gurdial*, (1932) 55 All 119 .
- 603. *Ghasi*, (1929) 52 All 214 .
- 604. *GS Rajakumar v Dr. Subramoniam Poti*, 1979 Cr LJ 738 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

#### [s 425] Mischief.

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person,<sup>1</sup> causes the destruction of any property, or any such change in any property or in the situation thereof<sup>2</sup> as destroys or diminishes its value or utility, or affects it injuriously,<sup>3</sup> commits "mischief".

**Explanation 1.**—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

**Explanation 2.**—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

#### ILLUSTRATIONS

- (a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.
- (b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- (c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.
- (d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. A has committed mischief.
- (f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.
- (g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A causes cattle to enter upon a field belonging to Z, intending to cause and

knowing that he is likely to cause damage to Z's crop. A has committed mischief.

### COMMENT—

A bare perusal of this provision clearly reveals that either intention or knowledge, is required for the offence of mischief. Explanation-1 clearly states that it is not essential for the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. In fact it is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not. Thus, for the offence of mischief it is sufficient that the offender knows that by his act he is likely to cause wrongful loss or damage to the public or to any person.<sup>605</sup> This section clearly speaks of causing any change in property or to destroy or diminishes its value or utility, or affects it injuriously, commits "mischief. Thus, on this broad definition, certainly by making construction on public land, which is not permissible, its utility will be diminished and the property will be injuriously affected".<sup>606</sup>

<sup>605</sup>. *Satish Chand Singhal v State of Rajasthan*, 2007 Cr LJ 4132 (Raj).

<sup>606</sup>. *Dilip Kumar v State of U P*, 2011 Cr LJ 2832 (All).

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

#### [s 426] Punishment for mischief.

**Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.**

#### COMMENT—

**Ingredients.**—This section requires three things:—

- (1) intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person;
- (2) causing the destruction of some property or any change in it or in its situation; and
- (3) such change must destroy or diminish its value or utility, or affect it injuriously.

This section deals with a physical injury from a physical cause.<sup>607</sup> Section 426, IPC, 1860 deals with punishment for the offence of "mischief" as defined in section 425. The said section 425 enacts a rule of which the maxim *sic utere tuo ut alienum non laedasis* but a partial exponent. It enacts a rule which, while preserving to the owner the maximum rights of property, prevents his using it to the injury or damage of another and all fortiori it punishes all who wantonly cause such injury or damage to another's property. Neither malice nor an intention to cause injury is essential for the constitution of the offence which may be committed by injury caused with only the knowledge of likelihood, which must, however, be strictly proved. The first part of the section sets out the *mens rea* on the guilty mind, which is the intention or the knowledge of likelihood of causing wrongful loss or damage to the public or to any person. The second part of the section pertains to the *actus res*, that is to say, the criminal act, which consists in causing destruction to any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously. The express mention of "damage" in the section is indicative of the fact that the purview of the offence of "mischief" is not intended to be confined only to cases of "wrongful loss", but also to engulf within it all such cases of damages by unlawful means. Destruction of any property within the meaning of the section carries with it the implication that something should be done to the property contrary to its natural use and serviceableness. Mischief implies the causing of wrongful loss or damage and no loss or damage is wrongful unless it involves invasion of a legal right. In any other case it is *damnum sine injuria*.<sup>608</sup>

Acts done or attempted to be done in *bona fide* assertion of a right, however ill-founded in law that right may be, cannot amount to the offence of mischief within section 425.<sup>609</sup> Thus, where the accused pulled down a wall which obstructed his pathway to

his *kotha* and which pathway he had been using for the last 22 years, it was held no offence under [section 425, IPC, 1860](#), was committed.<sup>610.</sup>

**1. 'Intend to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person'.—**This section does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.<sup>611.</sup> A dominant owner, having a right of way over land belonging to another, has no right himself to remove an obstruction unless his right of way is impaired by it. If he does so, he has employed unlawful means and if loss of property is caused thereby to another, he is guilty under this section.<sup>612.</sup> It is no answer to a charge of mischief to plead that the motive of the accused was to benefit himself, and not to injure another, if he knew that he could only secure that benefit by causing wrongful loss to another.<sup>613.</sup> Where while taking possession of the allotted portion of a house on the basis of a valid allotment order, the goods were simply put outside the premises and no obstruction was caused to the complainant landlord to collect his goods, offences under sections 425 and 427 were not made out.<sup>614.</sup>

**2. 'Causes the destruction of any property or any such change in any property, etc.'.—**It is the essence of this offence that the perpetrator must cause the destruction of property or such change in it as destroys or diminishes its value or utility. The destruction of a document evidencing an agreement void for immorality constitutes this offence as it can be used as evidence for other collateral purposes.<sup>615.</sup> The accused on receiving delivery of a registered article from a Postmaster was requested to sign an acknowledgement for the article received by him, but instead of returning the same duly signed he tore it up and threw it on the ground. It was held that he was guilty of mischief.<sup>616.</sup>

The 'destruction' or 'change' should be contrary to the natural use and serviceableness of the property in question. If a person unauthorisedly allows goats to graze in a forest, the grazing rights in which are restricted to holders of permits, the offence of mischief is not committed as by such an act the grass is only put to its normal use.<sup>617.</sup> The accused had a dispute about the possession of a certain land with the complainant. The complainant dug a well with a view to cultivate the said land, but the accused forcibly entered on the land and damaged the well. It was held that accused were guilty of mischief even though the complainant was a trespasser.<sup>618.</sup> Merely disconnecting electric supply does not amount to destruction of property or to such a change in property as destroys or diminishes its utility or value, and does not constitute an offence of mischief.<sup>619.</sup> A contrary view to this view of the Calcutta High Court has been taken by the Delhi High Court to say that switching off the electric supply by the landlord to the tenanted premises, even without causing damage to the distribution board or wires supplying electric current diminishes the value and utility of the tenanted premises within the meaning of [section 425, IPC, 1860](#).<sup>620.</sup> In order to make out an offence of mischief it is necessary to show that there was wrongful loss or damage to the property. So unless the property was destroyed or underwent such a change due to the action of the accused that its utility or value was diminished, no offence under [section 425, IPC, 1860](#), could be said to have been committed. Thus where a family took shelter in the door-way of an uninhabitable and dilapidated house by throwing away a few articles, the offence of mischief was not committed.<sup>621.</sup> Cutting off the water supply constitutes such destructive change in the flat as diminishes its value or utility.<sup>622.</sup>

## [s 426.1] 'Property'

means some tangible property capable of being forcibly destroyed but does not include an easement. The section refers to corporeal property and provides for cases in which such property is either destroyed or altered or otherwise damaged with a particular intent. A right to collect tolls at a public ferry is not property within the meaning of this section.<sup>623</sup> Where a person owns land on which there is a drain, the water running through which is used as of right by way of easement by another person, the former is not guilty of mischief, if the drain is destroyed by him because an easement does not come within the purview of 'property' within the meaning of section 425.<sup>624</sup> The offence of mischief may be committed in respect of both movable and immovable property.<sup>625</sup>

### **[s 426.2] 'Change'**

means a physical change in composition or form. The section contemplates a physical injury from a physical cause. Making a breach in the wall of a canal is an act which causes such a change in the property as destroys or diminishes its value or affects it injuriously.<sup>626</sup>

Where a landlord, in breach of an agreement with his tenants, omitted to pump water into their flats from a central reservoir without, however, interfering in any way with their taking water from the central reservoir, such omission did not constitute such a change as would make it "mischief" within the meaning of this section.<sup>627</sup> There is a contrary view to this which holds that cutting off the water supply does constitute an offence of mischief.<sup>628</sup> So also would be the case in regard to cutting off the supply of electricity by the landlord to the tenanted portion of the house.<sup>629</sup> This latter view appears to be more reasonable.

**3. 'As destroys or diminishes its value or utility, etc.'**—Destruction or diminution in value of the property regarding which the offence is committed is essential. The utility referred to in this section is that conceived by the owner and not by the accused.<sup>630</sup>

### **[s 426.3] Explanation 1.—**

Illustrations (e) and (f) exemplify this Explanation. It is not essential that the property interfered with should belong to the person injuriously affected. D, as a lessee of Government, held rights of fishery in a particular stretch of a river. C, by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing he was enabled to destroy, and did destroy, very large quantities of fish, both mature and immature. It was held that when C deliberately changed the course and condition of the river in the manner described to the detriment of D. he was guilty of mischief.<sup>631</sup>

### **[s 426.4] Explanation 2.—**

A person who destroys property, which, at the time, belongs to himself, with the intention of causing, or knowing that it is likely to cause, wrongful loss or damage to anybody else is guilty of this offence.<sup>632</sup> Illustrations (b) and (g) show that a man may commit mischief on his own property. In order, however, to his doing so, it is necessary that he intends to cause wrongful loss to some person, as in the cases stated in the illustrations.

607. *Moti Lal*, (1901) 24 All 155 , 156.
608. *Gopinath Nayak v Lepa Majhi*, 1996 Cr LJ 3814 (Ori).
609. *Ramchandra*, (1968) 70 Bom LR 399 .
610. *Manikchand*, 1975 Cr LJ 1044 (Bom); see also *Santosh Kumar Biswas*, 1979 Cr LJ NOC 79 (Cal.)
611. *Juggeshwar Dass v Koylash Chunder*, (1885) 12 Cal 55 . In *Nagendranath Roy v Bijoy Kumar Dasburma*, 1992 Cr LJ 1871 (Ori), it was held that mere negligence is not mischief. Negligence accompanied with intention to cause wrongful loss or damage may amount to mischief. Mischief involves mental act with destructive animus. In the instant case, an ailing calf died due to administering of injections despite protests.
612. *Hari Bilash Shau v Narayan Das Agarwala*, (1938) 1 Cal 680 ; *Zipru v State*, (1927) 51 Bom 487, 29 Bom LR 484.
613. *S Pannadi*, AIR 1960 Mad 240 [LNIND 1959 MAD 76] . Breaking open a person's godown and throwing out articles is an offence under this section. *Balai Chandra Nandy v Durga Charan Banerjee*, 1988 Cr LJ 710 (Cal).
614. *Ved Prakash v Chaman Singh*, 1995 Cr LJ 3890 (All).
615. *Vyapuri*, (1882) 5 Mad 401.
616. *Sukha Singh*, (1905) PR No. 24 of 1905.
617. *Ragupathi Ayyar v Narayana Goundan*, (1928) 52 Mad 151.
618. *Abdul Hussain*, (1943) Kar 7 .
619. *IH Khan v M Arathoon*, 1969 Cr LJ 242 (Cal).
620. *PS Sundaran v S Vershaswami*, 1983 Cr LJ 1119 (Del).
621. *Jaddan*, 1973 Cr LJ 490 (All).
622. *Gopi Naik*, 1977 Cr LJ 1665 (Goa).
623. *Ali Ahmad v Ibadat-Ullah Khan*, (1944) All 189 .
624. *Punjaji v Maroti*, (1951) Nag 855.
625. *Ram Birich v Bishwanath*, (1961) 2 Cr LJ 265 . See however, *Sippattar Singh v Krishna*, AIR 1957 All 405 [LNIND 1957 ALL 15] .
626. *Bansi v State*, (1912) 34 All 210 .
627. *Ram Das Pandey v Nagendra Nath Chatterji*, (1948) 1 Cal 329 .
628. *Gopi Naik*, 1977 Cr LJ 1665 (Goa).
629. *PS Sundaram*, 1983 Cr LJ 1119 (Del).
630. *Sumerchand*, (1962) 2 Cr LJ 692 .
631. *Chanda*, (1905) 28 All 204 .
632. *Dharma Das Ghose v Nusseruddin*, (1886) 12 Cal 660 .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 427] Mischief causing damage to the amount of fifty rupees.**

**Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

### COMMENT—

Where evidence on record clearly establishes that the sugarcane stems in the fields of the claimants were totally destroyed by using a tractor. Therefore, [section 427, IPC, 1860](#) is clearly established.<sup>633.</sup>

While causing mischief, there must be an intention behind that. In the present case, the petitioners were discharging their official duty. Therefore, they had no intention to cause any injury or mischief.<sup>634.</sup>

<sup>633.</sup> *Kashiben Chhaganbhai Koli v State of Gujarat*, (2008) 17 SCC 100 [LNIND 2008 SC 2366] : 2009 Cr LJ 1156 (SC).

<sup>634.</sup> *Ramnish v CBI*, 2016 Cr LJ 2371 (Del) : 2016 V AD (Del) 574.



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Mischief

**[s 428] Mischief by killing or maiming animal of the value of ten rupees.**Mischief by killing or maiming animal of the value of ten rupees.

**Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

### COMMENT—

This section is intended to prevent cruelty to animals and consequent loss to the owner.

#### **[s 428.1] 'Maiming'.—**

refers to those injuries which cause the privation of the use of a limb or a member of the body.<sup>635</sup> 'Maiming' implies a permanent injury,<sup>636</sup> wounding is not necessarily maiming.

<sup>635</sup>. *Fattehadin*, (1881) PR No. 33 of 1881.

<sup>636</sup>. *Jeans*, (1884) 1 C & K 539.

## THE INDIAN PENAL CODE

### CHAPTER XVII OF OFFENCES AGAINST PROPERTY

#### Of Theft

#### Of Mischief

**[s 429] Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.**

**Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.**

#### COMMENT—

This section provides for enhanced punishment owing to the greater value of the animals mentioned therein. This section is applicable where permanent injury is caused to the animal by the offence of mischief.<sup>637</sup> It has been held by the Supreme Court that the offence created by this section and the one under section 9(1) read with [section 50 of the Wild Life Protection Act, 1972](#) are substantially the same offence. Therefore, the bar of double jeopardy will not operate.<sup>638</sup> It is apparent that the most significant words are the opening words of the section which says, "whoever commits mischief by killing..." and thus 'mischief' appears to be an essential ingredient for attracting the offence and the mischief has been defined under [section 425 of the IPC, 1860](#). For constituting offence of mischief the essential ingredient would be the destruction of the property. Therefore, if no one has any property or right in any animal, the killing of that animal does not come within the purview of section 425 of the Code and thus, in the facts and circumstances of the instant case where the complainant has never come with the case that any dog over which somebody has right, has been caught, rather according to complaint, only stray dogs have been caught that too where it has never been alleged to have been poisoned, maimed or rendered useless there would be no application of [section 429 of the IPC, 1860](#).<sup>639</sup>

#### **[s 429.1] Cruelty to animals.—**

Though the complainant under the allegations made in the complaint petition made prayer to take cognizance of the offence under sections 11 (i) (a)(b)(c)(e)(f)(g)(h)(i) and (1) of the [Prevention of Cruelty to Animals Act, 1960](#) and also under [section 429 of the IPC, 1860](#) but the Court did not find any ground to proceed with the case so far offence under [section 429 of the IPC, 1860](#) is concerned and hence, he did not take any cognizance of the said offence, still the petitioner has been summoned to face trial not only for the offence under sections 11 (i)(a)(b)(c)(e)(f)(g)(h)(i) and (l) of the [Prevention of Cruelty to Animals Act, 1960](#) but also under [section 429 of the IPC, 1860](#) and therefore, any insertion of the offence under [section 429 of the IPC, 1860](#) in the summon under the facts and circumstances stated above is an error which may have