

Where A falsely represented himself to be B at a University Examination, got a hall-ticket under B's name, and wrote papers in B's name, it was held that A was guilty of cheating by personation and forgery.⁵³⁴

[s 416.3] False Representation as bachelor.—

It is not correct to say that without delivery of property there cannot be any cheating. A bare reading of [section 415, IPC, 1860](#), will show that if the person deceived is induced by reason of deception to do or omit to do anything which he would not do if he were not so deceived and if the act he has done being so deceived results in some damage or harm to his body, mind, reputation or property, the offence of cheating would nevertheless be committed. Thus where the accused dishonestly induced the complainant and his daughter to go through the marriage ceremony professing himself to be a bachelor while he had a wife living, it was held that his act amounted to an offence both under [sections 416 and 417, IPC, 1860](#), as harm was caused to the complainant and his daughter to their body, mind, reputation and even to their property.⁵³⁵ In this connection see discussion under head "*Explanation*" under section 415, *ante*.

⁵³¹. *Hague*, (1864) 4B & S 715, 720.

⁵³². *Ibid*, p. 721.

⁵³³. *Barnard*, (1837) 7 C & P 784.

⁵³⁴. *Appasami*, (1889) 12 Mad 151; *Ashwini Kumar Gupta*, (1937) 1 Cal 71 .

⁵³⁵. *MNA Achar v Dr. DL Rajgopal*, 1977 Cr LJ NOC 228 (Kant). *Anil Sharma v SN Marwaha*, (1995) 1 Cr LJ 163 (Del) complaint made after three years on the ground that the accused concealed the fact that he had a child from his first marriage held to be not maintainable.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 417] Punishment for cheating.

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT—

This section punishes simple cases of cheating. Where there is delivery of any property or destruction of any valuable security, section 420 is the proper section to apply.^{536.} The accused made false representation to the complainant by way of promise to marry her and believing such promise she complied with his request by sharing the bed together. Consequently she became pregnant but he refused to marry her. The accused challenged the proceedings initiated against him under section 417. It was held that *prima facie* case was made out under the section.^{537.}

Certain letters were prepared on the letterhead of a Minister by the accused by which actors were invited to a cultural show. Letters did not carry the signature of the Minister. The Court said that the act of the accused did not cause nor was likely to cause any harm to any person in mind or body. His conviction under section 417 was held to be not proper.^{538.} Only because accused issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under [section 417 of the Penal Code](#).^{539.} Where accused giving assurance of marriage to victim girl had undergone intercourse with victim and she would not have undergone intercourse had there been no such assurance of marriage by accused. Accused subsequently having disowned assurance given by him. It was held that ingredients of cheating under section 415 can be said to have been established. Accused held guilty of committing offence punishable under section 417 of Code.^{540.} Where accused is liable to be convicted under section 376 on allegation sexual intercourse by false promise of marriage there cannot be any separate conviction under section 417.^{541.} Though once the accused-appellant alleged failed to keep his promise she allowed him to commit sexual intercourse for the second time and invited her pregnancy. Not only that, even after termination of pregnancy for the second time she again allowed the accused-appellant to have sexual intercourse with her and make her pregnant for the third time. Offence under section 417 not made out.^{542.} Accused allegedly committed sexual intercourse on prosecutrix on pretext that he would provide temporary job of peon to her in bank which would be regularized after completion of one year. Though the offence under section 376 is not made out, offence under section 417 is made out.^{543.} Where accused wanted to marry prosecutrix and on her refusal committed forcible sexual intercourse with her. But, if the promise of marriage was given and the girl had succumbed on that account, by itself, may not amount to cheating. Besides

this, the girl has very specifically stated that even subsequently, she was ravished against her wishes. Therefore, the theory of promise of marriage and the consent for sexual intercourse will wither away, acquit the accused of the offence under [section 417 of IPC, 1860](#) though he was convicted under [section 376 IPC, 1860](#).^{544.}

^{536.} No process was issued where the allegations were that the girl was represented to be as hale and hearty and it was found after the marriage that she was weak of sight and had urinary infection. The complaint dismissed. *Anilchandra Pitambardas v Rajesh*, [1991 Cr LJ 487](#) (Bom).

^{537.} *Ravichandran v Mariyammal*, [1992 Cr LJ 1675](#) (Mad).

^{538.} *Jibrial Diwan v State of Maharashtra*, [AIR 1997 SC 3424](#) [LNINDORD 1997 SC 149] : [1997 Cr LJ 4070](#) .

^{539.} *V Y Jose v State of Gujarat*, [AIR 2009 SC \(Supp\) 59](#). Allegation is accused cheated the complainant by not making of payment of money within time given at time of receiving of loan. It is held that fraudulent dishonest intention of accused at time of issuance of cheques is to be proved to book her for offence of cheating and there is no such intention proved on the part of accused. Accused cannot be punished under [sec 417](#) or [420](#) of [IPC](#) *Kanailal Bhattacharjee v Bhajana Biswas*, [2012 Cr LJ 4158](#) (Gau).

^{540.} *Manik Das Baishnav v State of Tripura*, [2012 Cr LJ 1954](#) (Gau); *Bipul Medhi v State of Assam*, [2008 Cr LJ 1099](#) (Gau); *Sukhamay Manna v State of West Bengal*, [2010 Cr LJ 829](#) (Cal)-question cannot be decided in revisional jurisdiction against framing of charge.

^{541.} *Ravi v State by Inspector of Police*, [2010 Cr LJ. 3493](#) (Mad).

^{542.} *Kanchan Deb v State of Tripura*, [2011 Cr LJ 3853](#) (Gau); *K Ashok Kumar Reddy v State of AP*, [2008 Cr LJ 2783](#) (AP); *P Govindan v State by Inspector of Police*, [2008 Cr LJ 4263](#) (Mad).

^{543.} *Girish Kumar Sharan v State of Jharkhand*, [2010 Cr LJ 4215](#) (Jha); *Subrato Ghosh v State of Jharkhand*, [2011 Cr LJ 3637](#) (Jha).

^{544.} *Zindar Ali SK v State of West Bengal*, [2009 \(3\) SCC 761](#) [LNIND 2009 SC 249] : [AIR 2009 SC 1467](#) [LNIND 2009 SC 249] .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 418] Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

Under [section 418 of IPC, 1860](#) who ever cheats with the knowledge that is likely thereby to cause wrongful loss to the person whose interest in the transaction to which the cheating relates he was bound either by law or by legal contract to protect, shall be punished with imprisonment or fine or with both.⁵⁴⁵ This section applies to cases of cheating by guardians, trustees, solicitors, agents, and the manager of a Hindu family, directors or managers of a bank in fraud of the shareholders. It is the abuse of trust that is met with severe punishment.

[s 418.1] False balance-sheet for inducing to renew deposit.—

Where the directors, manager and accountant dishonestly that is to obtain wrongful gain for themselves or to cause wrongful loss to others put before the shareholders balance sheets which they knew to be materially false and misleading and likely to mislead the public as to the condition of the bank and concealed its true condition and thereby induced depositors to allow their money to remain in deposit with the bank, they were held liable under this section.⁵⁴⁶ In *Medchl Chemicals & Pharma Pvt Ltd v Biological E Ltd*,⁵⁴⁷ wherein it was observed that: "In order to attract the provisions of section 418 and section 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of section 418 or section 420. *Mens rea* is one of the essential ingredients of the offence of cheating under section 420. As a matter of fact Illustration (g) to section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract."

545. *Behram Bomanji Dubash v State of Karnataka*, 2010 Cr LJ 3963 (KAR).

546. *Moss*, (1893) 16 All 88 . Refusal by bank officers, for reasons beyond their control, to take a house on rent after promising was not punishable under this section though the landlord **relying** on the promise spent money on finishing the house as desired. It was a matter for a civil action. *S Shankarmani v Nibar Ranjan Parida*, 1991 Cr LJ 65 (Ori).

547. *Medchl Chemicals & Pharma Pvt Ltd v Biological E Ltd*, 2000 (3) SCC 269 [LNIND 2000 SC 373] .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 419] Punishment for cheating by personation.

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

If a person cheats by pretending to be some other person, or representing that he is a person other than he, then, such person can be charged with the allegation of 'cheating by personation' ([section 416, IPC, 1860](#)) and punished under section. 419, [IPC, 1860](#).

[s 419.1] Overlapping.—

The offences under [sections 170, IPC, 1860](#) and [419, IPC, 1860](#) overlap each other. Cheating by personation ([section 419, IPC, 1860](#)) is an offence of general character, under which a person may pretend to be anyone, other than what he really is. But, cheating by pretending to be a public servant ([section 170, IPC, 1860](#)) is a specific offence, where one pretends to be a public servant and has all the ingredients of cheating by personation under [section 419, IPC, 1860](#).⁵⁴⁸

⁵⁴⁸. *I K Narayana v State of Karnataka*, [2013 Cr LJ 874](#) (Kar).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 420] Cheating and dishonestly inducing delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

Simple cheating is punishable under section 417. But where there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of the person deceiving this section comes into operation. For an offence under this section it must be proved that the complainant parted with his property acting on a representation which was false to the knowledge of the accused and that the accused had a dishonest intention from the outset.⁵⁴⁹ In *Sonbhandra Coke Products v State of UP*,⁵⁵⁰ it was held that offence of cheating can be made out only if it has been shown that damage or harm has been caused to the person so deceived.

The Supreme Court has held that the word 'property' in this section does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value, in the hand of the person cheated. The communicated order of assessment received by an assessee is "property".⁵⁵¹

An admission card to sit for an Examination of a University is property within the meaning of this section; though the admission card as such has no pecuniary value it has immense value to the candidate for the examination.⁵⁵² A driving licence or its duplicate⁵⁵³ had been held to be property within the meaning of this section. Where a bank was defrauded of a large amount and the signatures of the accused bank manager on drafts used for the purpose were proved beyond doubt to be his signature, his conviction under the section was held to be proper.⁵⁵⁴ Where a builder was defrauded by a conspiring team of financiers by giving him counterfeit currency, conviction under this section was fully warranted.⁵⁵⁵ In the ordinary course of things, relationship of banker and customer is that of debtor and creditor and not that of trustee and beneficiary. Payment of money against cheques already issued by the customer at a time when the bank had received notice to close the account did not in itself amount to cheating the customer in conspiracy with the payee.⁵⁵⁶

[s 420.1] Intention to deceive at the time of inducement.—

The primary requirement to make out an offence of cheating under section 415 punishable under [section 420 IPC, 1860](#) is dishonest/fraudulent intention at the time of inducement is made.⁵⁵⁷ The intention to deceive should be in existence at the time when the inducement was made. Mere failure to keep up a promise subsequently cannot be presumed as leading to cheating.⁵⁵⁸

The intention to deceive was held to be not there either at the initial stage or any subsequent stage in the mere fact of transferring a portion of the property over which the transferors had no complete ownership. The sale could be binding only to the extent of the transferor's right.⁵⁵⁹ Where bogus receipts were issued for part payment of the price of the property over which the recipient had no ownership and therefore, no right to sell, he was held to be guilty of the offence under the section.⁵⁶⁰

[s 420.2] Dishonour of cheque.—

A cheque was returned unpaid by the bank under the remark "payment stopped by drawer". The complainant alleged that the cheque was dishonoured because the drawer of the cheque had no sufficient balance or arrangement. The Court refused to quash the complaint. Issuing a cheque without arrangement of sufficient funds may amount to cheating.⁵⁶¹ Where goods were delivered in a normal sales transaction and the buyer had also become the owner of the goods because the transfer of ownership was not linked with payment, it was held that the fact that a cheque for the price, which was issued in due course, bounced, did not constitute the offence of cheating because there was no evidence of intention to cheat at the outset of the transaction.⁵⁶² Dishonest intention cannot be inferred from the bouncing of a cheque issued for an existing debt. The conviction of the accused for return of such cheque was not proper.⁵⁶³

A cheque was handed over in a share transaction by the accused. The cheque was signed by his wife. The person who passed the cheque was held guilty of cheating because of the dishonour but not his wife because she was not seen anywhere near the transaction.⁵⁶⁴

[s 420.3] [Section 138, NI Act](#) and [section 420 IPC, 1860](#).—

In the prosecution under [section 138 Negotiable Instruments Act, 1881](#), the *mens rea*, i.e., fraudulent or dishonest intention at the time of issuance of Cheque is not required to be proved. But in a prosecution under [section 420 IPC, 1860](#) the issue of *mens rea* may be relevant. There may be some overlapping of facts in the cases under [section 420 IPC, 1860](#) and [section 138 of Negotiable Instruments Act, 1881](#), but ingredients of offences are entirely different. Thus, the subsequent case is not barred.⁵⁶⁵

[s 420.4] Conversion of Cheques.—

Cheques issued by a company in the name of a supplier were converted by an employee of the company by opening an account in the name of the supplier. The opening of the account was facilitated by an employee of the bank. Both of them were held to be joint offenders. The order of convicting both of them was held to be not improper.⁵⁶⁶

[s 420.5] Sections 417 and 420.—

In every case when property is delivered by a person cheated, there must always be a stage when the person makes up his mind to give the property on accepting the false representation made to him. It cannot be said that in such cases the person committing the offence can only be tried for the simple offence of cheating under section 417 and cannot be tried under this section because the person cheated parts with his property subsequent to making up his mind to do so.^{567.}

[s 420.6] Goods received under hire-purchase.—

Breach of the conditions of a hire purchase agreement under which goods or property has been received does not amount to an offence under this section.^{568.}

Where the complainant stated that the accused had taken the vehicle on hire-purchase but failed and neglected to pay certain instalments and the Court found that there was no dishonest intention on the part of the hirer at the time of the transaction, the complaint was quashed, the Court observed that it was open to the complainant to proceed against the hirer before a civil Court for appropriate relief.^{569.}

[s 420.7] Arbitration clause.—

The presence of an arbitration clause in an agreement cannot prevent criminal prosecution of a person if the ingredients of the offence are made out to the *prima facie* extent.^{570.}

[s 420.8] Financial crime.—

The accused an investment advisor charged with dishonestly concealing material facts relating to bonds. The question was whether he had committed the alleged act of dishonesty contrary to the Financial Services Act, 1986 section 47(1). Such determination would have to include considering his intentions as to his future conduct. It was held that the phrase "material facts" within section 47(1) was to be widely construed so as to include his present intention as to future conduct. Dishonest concealment was also included within "material facts". It was required under section 4(A) of the 1964 Act to consider his intentions and it was appropriate for the jury to consider such intentions, not in relation to dishonesty, but in relation to the victims of the alleged acts in connection with the particulars of the offence.^{571.}

[s 420.9] Finance company's inability to pay back deposits.—

A finance company was not able to pay back deposit owing to its poor financial condition as found by the Company Law Board and Reserve Bank. The Court found no evidence of any intention to commit criminal breach of trust or any dishonest inducement. The complaint was held liable to be quashed.^{572.}

Issuing cheques with knowledge that they would be dishonoured amounts to an offence under this section.^{573.} Offence under section 420 was alleged against the

accused for issuance of cheque, who died and his business was inherited by his son. Police filed final report stating that the son is liable. The Court held that as it is well-settled law that a criminal's culpable offence shall not be inherited by his heirs. Once the accused died, the charge against the accused has been dismissed as abates.^{574.}

[s 420.10] Legal opinion given by Advocate.—

Allegation is that advocate submitted false legal opinion to the bank in respect of the housing loans in the capacity of a panel advocate and did not point out actual ownership of the properties in question. The liability against an opining advocate arises only when the lawyer has an active participant in a plan to defraud the bank. Merely because his opinion may not be acceptable, he cannot be made liable for criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. There is no *prima facie* case for proceeding in respect of the charges alleged against him. Proceedings quashed.^{575.}

[s 420.11] Fraudulent inducement for deposits, each deposit a separate offence.—

Where a fraudulent finance company collects deposits, there is a separate offence towards each depositor. The fact that the maximum punishment of five years is prescribed for a single offence of a cheating could not be pressed into service by the accused for seeking relief.^{576.}

[s 420.12] Punishment.—

The accused obtained payments from the Government by sending bills with bogus railway receipt numbers. This was a false representation which amounted to cheating. A long period of 30 years had passed since then. The sentence of one year imprisonment was reduced to the period already undergone but the fine of Rs. 15,000 was maintained.^{577.} In a conspiracy to benefit from a forged will, the Court imposed maximum possible punishment.^{578.}

[s 420.13] Pendency of civil suit.—

A civil suit for specific performance was already pending against the party who caused the deception. The Court said that criminal proceeding was not to be quashed on that basis alone.^{579.}

[s 420.14] Proceedings quashed because the dispute is purely civil in nature.—

It may be true that where the Court finds that the dispute between the parties was purely of civil nature, it may not allow criminal proceedings to go on. But no such law can be laid down because a case may be such that both a civil action and criminal complaint may be maintainable, the cause of action for both being the same.^{580.} Mere breach of contract does not necessarily involve cheating.^{581.} Where the dispute is