

essentially about the profit of the hotel business and its ownership, it is purely civil in nature and hence, the proceedings are quashed.<sup>582</sup> Where, complaint is about the non-payment after placing orders for fabrication work on complainant, the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not *prima facie* disclose commission of alleged criminal offence under [section 420 IPC, 1860](#). Proceedings quashed.<sup>583</sup> Allegation was that appellant had executed a sale deed in his favour in respect of a plot of land which had already been the subject matter of a previous transfer, Court held that he can at best question such transfer and claim damages in respect thereof from the vendor of the appellant by way of appropriate damages, but an action in the Criminal Court would not lie in the absence of any intention to cheat and/or defraud.<sup>584</sup> An agreement for sale of land and the earnest money paid to the owner as part consideration and possession of the land having been transferred to the purchasers/complainants and the subsequent unwillingness of the owner to complete the same, gave rise to a liability of a civil nature and the criminal complaint was, therefore, not competent.<sup>585</sup>

#### **[s 420.15] Using forged marks sheet.—**

The petitioner knew that they were submitting a forged marks-sheet for the purpose of securing a seat in the medical college. Their conviction under sections 420 and 471 (using as genuine a forged document) was held to be proper. Failure in securing the purpose would not result in acquittal.<sup>586</sup>

#### **[s 420.16] Checking in under false pretences.—**

The allegation against the accused was that he made a representation to the railway retiring room attendant that he was an Assistant Commercial Manager in railways and got a room allotted to him on that basis. Thus, a *prima facie* case of cheating was made out. The complaint was not to be quashed.<sup>587</sup>

#### **[s 420.17] Juristic persons.—**

The punishment of imprisonment provided under the section cannot be imposed on a juristic person, a construction company in this case.<sup>588</sup>

In order to hold persons liable vicariously for any offence involved in the affairs of the company, it is not enough to show that they were running the affairs of the company. All the ingredients of the offence must be proved against them. The company has also to be made a party to the proceeding. In this case, there were only individual accusations against the persons concerned.<sup>589</sup>

#### **[s 420.18] Previous sanction.—**

The offence of cheating under section 420 or for that matter offences relatable to section 467, section 468, section 471 and section 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. Hence, the sanction of the competent authority under [section 197 Cr PC, 1973](#) is not required.<sup>590</sup>

### [s 420.19] Compounding.—

Where the allegation was that accused with the assistance of known officials of AICTE had produced forged and fraudulent document to obtain recognition of the mentioned institution from AICTE and thereby cheated AICTE, the application for compounding of offence could not have been considered by the learned Magistrate without affording an opportunity of hearing to the AICTE. It is not the CBI which has been cheated by the action of the respondent No. 1 but in fact the AICTE.<sup>591.</sup>

### [s 420.20] Section 420 with non-compoundable offences.—

Simply because an offence is not compoundable under [section 320 Cr PC, 1973](#) is by itself no reason for the High Court to refuse exercise of its power under [section 482 Cr PC, 1973](#). That power can be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility.<sup>592.</sup>

<sup>549.</sup> *Mobarik Ali*, (1958) SCR 328 [LNIND 1957 SC 81] .

<sup>550.</sup> *Sonbhandra Coke Products v State of UP*, 1994 Cr LJ 657 (All).

<sup>551.</sup> *Ishwarlal Girdharilal*, 1969 (71) Bom LR 52 : AIR 1969 SC 40 [LNIND 1968 SC 143] ; see also *NM Chakraborty*, 1977 Cr LJ 961 (SC).

<sup>552.</sup> *Abhayanand*, (1961) 2 Cr LJ 822 SC.

<sup>553.</sup> *Ramchander*, AIR 1966 Raj 182 [LNIND 1965 RAJ 67] .

<sup>554.</sup> *Adithela Immanuel Raju v State of Orissa*, 1992 Cr LJ 243 .

<sup>555.</sup> *Nellai Ganesan v State of TN*, 1991 Cr LJ 2157 (Mad).

<sup>556.</sup> *ANZ Grindlays Bank v Shipping and Clearing (Agent) Pvt Ltd*, 1992 Cr LJ 77 (Cal).

<sup>557.</sup> *Annamalai v State of Karnataka*, 2011 Cr LJ 692 (SC) : (2010) 8 SCC 524 [LNIND 2010 SC 745] .

<sup>558.</sup> *SN Palantikar v State of Bihar*, AIR 2001 SC 2960 [LNIND 2001 SC 2381] : 2001 Cr LJ 4765 .  
*Hira Lal Hari Lal Bhagwati v CBI*, New Delhi, 2003 (5) SCC 257 [LNIND 2003 SC 499] .

<sup>559.</sup> *Ramesh Dutt v State of Punjab*, (2009) 15 SCC 429 [LNIND 2009 SC 1475] .

<sup>560.</sup> *N Devindrappa v State of Karnataka*, (2007) 5 SCC 228 [LNIND 2007 SC 602] : AIR 2007 SC 1741 [LNIND 2007 SC 602] : 2007 Cr LJ 2949 .

<sup>561.</sup> *Thomas Verghese v P Jerome*, 1992 Cr LJ 3080 (Ker). *Nemichand Swaroopchand v TH Raibhagi*, 2001 Cr LJ 4301 (Kant), a cheque issued for return of articles in a business transaction dishonoured, there was nothing to show any fraudulent or dishonest intention, no offence made out. *Jasmin B Shah v State of Jharkhand*, 2003 Cr LJ 621 (Jhar), dishonour of cheque, investigation not complete, charge sheet not submitted, prayer for quashing the proceeding rejected.

<sup>562.</sup> *HICEL Pharma Ltd v State of AP*, 2000 Cr LJ 2566 (AP). *Rajendra Vasantrao Khoda, v Laxmikant*, 2000 Cr LJ 1196 (Bom) a complaint as to dishonour of cheque was not quashed, ingredients of cheating being made out. *Subodh S Salaskar v Jayaprakash M Shah*, (2008) 13

SCC 689 [LNIND 2008 SC 1549] : AIR 2008 SC 3086 [LNIND 2008 SC 1549] : (2008) KLT 616 : 2008 Cr LJ 3953 post-dated cheque issued in 1996, presented in 2001, dishonoured because account closed, but money had been paid back before that, no cheating, subsequent closing was inconsequential.

563. *Venkatchalam v State*, 1998 Cr LJ 3189 (Mad). *Bipin Singh v Chongitham*, 1997 Cr LJ 724 : AIR 1997 SC 1448 [LNIND 1996 SC 1690], representation by the accused so as to create public belief that a particular writing was that of a certain other person and not that he had himself written that book. No forgery or cheating. *Mintu Singha Roy v Tenzing Dolkar*, 2012 Cr LJ 3115 (Sik) regarding the bounced cheque it was condoned as 50% of payment is received by the complainant

564. *Devender Kumar Singla v Baldev Krishna Singla*, AIR 2004 SC 3084 [LNIND 2004 SC 228] : (2005) 9 SCC 15 [LNIND 2004 SC 228].

565. *Sangeetaben Mahendrabhai Patel v State of Gujarat*, (2012) 7 SCC 621 [LNIND 2012 SC 1473] : AIR 2012 SC 2844 [LNIND 2012 SC 1473]; See the other view in *Kolla Veera Raghav Rao v Gorantla Venkatewwara Rao*, (2011) 2 SCC 703 [LNIND 2011 SC 128] : 2011 Cr LJ 1094.

566. *Vadivelu v State of TN*, 1999 Cr LJ 369 (Mad).

567. *BS Dhaliwal*, (1967) 1 SCR 211 [LNIND 1966 SC 165].

568. *Abdul Rahim v Inspector of Police*, 1992 Cr LJ 370 (Mad). *OPTS Marketing Pvt Ltd v State of AP*, 2001 Cr LJ 1489 (AP), prosecution under section 420, IPC, 1860 is still possible after the introduction of section 138 in the *Negotiable Instruments Act*, if the ingredients of the offence are satisfied, the complaint cannot be quashed.

569. *Mahesh Kumar v State of Karnataka*, 2003 Cr LJ 528 (Kant).

570. *SN Palanitkar v State of Bihar*, AIR 2001 SC 2960 [LNIND 2001 SC 2381] : 2001 Cr LJ 4765.

571. *R v Central Criminal Court*, (2002) EWHC 548 : (2002) 2 Cr App. R 12 [QBD (Admin. Ct)].

572. *Nilesh Lalit Parekh v State of Gujarat*, 2003 Cr LJ 1018 (Guj); *Mohd. Shaf-at Khan v National Capital Territory of Delhi*, (2007) 13 SCC 354 [LNIND 2007 SC 924], collection by fraud company, the court said that it would be appropriate to work out modalities as to how the properties of the company could be sold to get the highest price, so that the dues of the depositors and others could be paid back.

573. *Ramprasad Chatterjee v Md. Jakir Kureshi*, 1987 Cr LJ 1485 (Cal). But otherwise a cheque is not a representation that there is balance in the account. *GK Mohanty v Pratap Kishore Das*, 1987 Cr LJ 1446 (Ori). Where cheques were given subsequently to the transaction and there was no inducement at the stage of negotiations, prosecution under the section was quashed, *MS Natrajan v Ramasis Shaw*, (1995) 2 Cr LJ 2011 (Cal). *S Muthu Kumar v State of TN*, (1995) 1 Cr LJ 350 (Mad) purchasing goods against post-dated cheques knowing that they would not be honoured is a ground for registering a complaint and the complaint is not liable to be quashed.

574. *Lakshmi Metal Works v State*, 2016 Cr LJ 2730 (Mad) : IV (2016) CCR 282 (Mad).

575. *Central Bureau of Investigation Hyderabad v K Narayana Rao*, 2012 Cr LJ 4610 : (2012) 9 SCC 512 [LNIND 2012 SC 569].

576. *Narinderjit Singh v UOI*, AIR 2001 SC 3810 [LNIND 2001 SC 2325].

577. *Kuldip Sharma v State*, 2000 Cr LJ 1272 (Del).

578. *R v Spillman*, (2001) 1 Cr App R (S) 139 [CA (Crim Div)]. *R v Ball*, (2001) 1 Cr App R (S) 49[CA (Crim Div)] serious custodial punishment awarded where the accused persons deceived 81 year old lady by receiving several times more money than the actual worth of the repair work done. The sentences correctly reflected that both the accused were jointly part of the conspiracy which concerned an extremely serious fraud, an enormous sum of money and the worst possible breach of trust. The report had been considered and the judge was entitled to

decide what weight should be attached to the evidence. *Rajamani v Inspector of Police*, 2003 Cr PC 2002 (Mad), freezing of the accounts of third parties was held to be illegal.

579. *Vitoori Pradeep Kumar v Kaisula Dharmaiah*, 2001 Cr LJ 4948 (SC).

580. *VR Dalal v Yougendra Naranji Thakkar*, (2008) 15 SCC 625 [LNIND 2008 SC 1222] : AIR 2008 SC 2793 [LNIND 2008 SC 1222] . In the relations between partners in opening and closing a firm, the essential ingredients of the offence of criminal breach of trust and cheating were missing.

581. *VY Jose v State of Gujarat*, (2009) 3 SCC 78 [LNIND 2008 SC 2435] : (2009) 1 SCC Cr 996. *Dalip Kaur v Jagnar Singh*, (2009) 14 SCC 696 [LNIND 2009 SC 1409] : AIR 2009 SC 3191 [LNIND 2009 SC 1409] , mere failure to refund the amount of advance which became due constituting breach of contract did not amount to cheating or criminal breach of trust. *B Suresh Yadav v Sharifa Bee*, (2007) 13 SCC 107 [LNIND 2007 SC 1238] : AIR 2008 SC 210 [LNIND 2007 SC 1238] : 2008 Cr LJ 431 , dispute of civil nature, complaint was an abuse of process, quashed.

582. *Paramjeet Batra v State of Uttarakhand*, JT 2012 (12) SC 393 [LNIND 2012 SC 812] : 2012 (12) Scale 688 [LNIND 2012 SC 812] ; *Hussainbeg Hayatbeg Mirza v State of Gujarat*, 2013 Cr LJ 1090 (SC) - proceedings quashed since there were no ingredients or elements of criminal offence; to the same effect *VP Shrivastava v Indian Explosives Limited*, (2010) 10 SCC 361 [LNIND 2010 SC 920] : (2010) 3 SCC (Cr) 1290.

583. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; but where the allegation is about the execution of fictitious sale deeds the purpose of which was to make unlawful gain, the question whether the respondent was aware that such deeds were executed for getting lawful gain, which may cause injury to another person as defined under section 44 IPC, 1860 is a matter which can be established only on adducing evidence. Order quashing the proceedings set aside [*State of Madhya Pradesh v Surendra Kori*, (2012) 10 SCC 155 [LNIND 2012 SC 681] : 2013 Cr LJ 167 : AIR 2012 SC (Supp) 949; *Joseph Salvaraj A v State of Gujarat*, AIR 2011 SC 2258 [LNIND 2011 SC 576] : (2011) 7 SCC 59 [LNIND 2011 SC 576] ; *Udai Shankar Awasthi v State of UP*, (2013) 2 SCC 435 [LNIND 2013 SC 22] 2013 (1) Scale 212 [LNIND 2013 SC 22] .

584. *Rama Devi v State of Bihar*, (2010) 12 SCC 273 [LNIND 2010 SC 875] : AIR 2010 SC (Supp) 83; *Kishan Singh v Gurpal Singh*, (2010) 8 SCC 775 [LNIND 2010 SC 747] : AIR 2010 SC 3624 [LNIND 2010 SC 747] - After losing in civil suit FIR filed with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. Proceedings quashed.

585. *Nageshwar Prasad Singh v Narayan Singh,k* (1998) 5 SCC 694 ; **distinguished** on facts in *SP Gupta v Ashutosh Gupta*, (2010) 6 SCC 562 [LNIND 2010 SC 507] : (2010) 3 SCC (Cr) 193.

586. *AS Krishna v State of Kerala*, 1998 Cr LJ 207 (Ker). The incident was 17 years old. The sentence of 1 year and 2 years was reduced to the period of three months. *Premalata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj) using false certificate to secure an appointment.

587. *Develle Venkateswarlu v State of AP*, 2000 Cr LJ 2929 (AP).

588. *Essar Constructions Ltd v CBI*, 1999 Cr LJ 1861 (Bom).

589. *R Kalyani v Janak C Mehta*, (2009) 1 SCC 516 [LNIND 2008 SC 2127] : (2009) 1 SCC Cr 567; *MAA Annamalai v State of Karnataka*, (2010) 8 SCC 524 [LNIND 2010 SC 745] : 2011 Cr LJ. 692 (SC).

590. *Om Dhankar v State of Haryana*, (2012) 11 SCC 252 [LNINDORD 2012 SC 439] : 2012 (3) Scale 363 [LNINDORD 2012 SC 439] **relied on** *Prakash Singh Badal v State of Punjab*, 2007 (1) SCC 1 [LNIND 2006 SC 1091] : AIR 2007 SC 1274 [LNIND 2006 SC 1091] .

591. *All India Council for Technical Education v Rakesh Sachan*, 2013 (2) Scale 15 .

592. AIR 2012 SC 499 [LNIND 2011 SC 1158] ; *Jayrajsinh Digvijaysinh Rana v State of Gujarat*, 2012 (6) Scale 525 [LNIND 2012 SC 417] : 2012 CR LJ 3900 ; *Shiji @ Pappu v Radhika*, 2011 (10)



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Fraudulent Deeds and Dispositions of Property

**[s 421] Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.**

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfer or causes to be transferred to any person, without adequate consideration, any property,<sup>1</sup> intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, 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 and the three following sections deal with fraudulent conveyances referred to in [section 53 of the Transfer of Property Act, 1882](#) and the Presidency- towns and Provincial Insolvency Acts.

This section specially refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It will cover *benami* transactions in fraud of creditors. It will apply to property both movable and immovable.

Compare sections 205–210 with sections 421–424 as they are similar in character. The former sections deal with fraud on Courts, the latter, with fraud on creditors.

#### **[s 421.1] Ingredients.—**

To prove an offence under this section the prosecution must show:—

1. That the accused removed, concealed or delivered the property or that he transferred it or caused it to be transferred to someone.
2. That such transfer was without adequate consideration.
3. That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person.
4. That he acted dishonestly and fraudulently.<sup>593.</sup>

**1. 'Property'.—**This word includes a chose in action. The right to cut trees under an agreement for the purpose of making charcoal from wood is movable property.<sup>594.</sup>

593. *Ramautar Chaukhany*, [1982 Cr LJ 2266](#) (Gau).

594. *Manchersha v Ismail*, (1935) 60 Bom 706, 38 Bom LR 168.

# **THE INDIAN PENAL CODE**

## **CHAPTER XVII OF OFFENCES AGAINST PROPERTY**

### **Of Theft**

### **Of Fraudulent Deeds and Dispositions of Property**

**[s 422] Dishonestly or fraudulently preventing debt being available for creditors.**

**Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, 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, like the preceding section, is intended to prevent the defrauding of creditors by masking property. Any proceedings to prevent the attachment and sale of debts due to the accused will fall under this section. The offence consists in the dishonest or fraudulent evasion of one's own liability.



# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Fraudulent Deeds and Dispositions of Property

**[s 423] Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.**

**Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, 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 deals with fraudulent and fictitious conveyances and trusts. Under it, the dishonest execution of a *benami* deed is punishable. Where the consideration for the sale of immovable property was, with the consent of the purchaser, exaggerated in a deed of sale in order to defeat the claim of the pre-emptor, it was held that the purchaser was guilty of this offence.<sup>595</sup>

The scope of [section 423, IPC, 1860](#) deals with two specific frauds in the execution of deeds or instruments of transfer or charge, namely, (i) false recital as to consideration and (ii) false recital as to the name of beneficiary.<sup>596</sup>

The word 'consideration' does not mean the property transferred. An untrue assertion in a transfer deed that the whole of a plot of land belonged to the transferor is not a statement relating to the consideration for the transfer and is not an offence under this section.<sup>597</sup>

<sup>595</sup>. *Gurditta Mal*, (1901) PR No. 10 of 1902; *Mahabir Singh*, (1902) 25 All 31 .

<sup>596</sup>. *Mukesh Dhirubhai Ambani v State of Orissa*, 2005 Cr LJ 2902 (Ori).

<sup>597</sup>. *Mania Goundan*, (1911) 37 Mad 47.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of Fraudulent Deeds and Dispositions of Property

**[s 424] Dishonest or fraudulent removal or concealment of property.**

**Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, 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 provides for cases not coming within the purview of sections 421 and 422. It contemplates such a concealment or removal of property from the place in which it is deposited, as can be considered fraudulent. Where one of the several partners removed the partnership books at night, and when questioned denied having done so,<sup>598</sup> where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force,<sup>599</sup> where the accused who was bound under the conditions of his tenure to share the produce of his land with the landholder in a certain proportion, dishonestly concealed and removed the produce, thus preventing the landholder from taking his due share,<sup>600</sup> it was held that this offence was committed. But a removal of crops to avoid an illegal restraint,<sup>601</sup> or removal of property, which was attached after the date fixed for the return of the warrant of attachment, from the possession of the custodian<sup>602</sup> was held not to amount to an offence under this section. Certain crops were attached in execution of a decree and placed in the custody of a bailiff. The crops did not belong to the judgment-debtors, and the owners cut and removed a portion of them in spite of the resistance of the bailiff. It was held that no offence was committed.<sup>603</sup> In order to bring the case within [section 424, IPC, 1860](#) it is necessary to show that there has been dishonest or fraudulent concealment or removal of any property or dishonest or fraudulent assistance in the matter of concealment or removal of the property. The other part of section 424 is not applicable and therefore, it is not adverted to. There is no case in the complaint that any furniture or equipment have been concealed or removed. The facts averred do not indicate any such removal or concealment. What is stated is that they are still there, but that the complainant is being obstructed from exercising the rights of joint possession over them. The question of assisting in the dishonest or fraudulent removal arises only if there is concealment. Therefore, [section 424, IPC, 1860](#) is not applicable.<sup>604</sup>