

455. *Giriraj Singh Gaghela v State of A P*, [2009 Cr LJ 1257](#) (AP).

456. *Rajive Sandhu v State of Union Territory*, [2004 Cr LJ 4308](#) (PH).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of the Receiving of Stolen Property

[s 412] Dishonestly receiving property stolen in the commission of a dacoity.

Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with ^{457.} [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

This section was enacted to stamp out the offence of dacoity which was very rampant when the Code came into force. It refers to persons other than actual dacoits. It provides the same punishment to a receiver of property obtained in dacoity as to dacoits themselves. It is apparent from a plain reading of [section 412 IPC, 1860](#), that a person receiving stolen goods, would be guilty of the offence under [section 412 IPC, 1860](#), if it can further be shown, that the recipient of the goods knew (or had reason to believe), that the person offering the goods, belonged to a gang of dacoits.^{458.}

[s 412.1] CASES.—

The Supreme Court held in *PB Soundankar v State of Maharashtra*, in absence of any evidence to show the appellant was aware, that the silver chips presented to him by accused were procured by the commission of a dacoity or in the alternative that he knew (or had reason to believe) that accused belonged to a gang of dacoits the guilt of the appellant under [section 412 IPC, 1860](#) could not be stated to have been substantiated in the facts and circumstances of the present case." Hence, the conviction altered to section 411.^{459.} Where properties looted in a dacoity were found in the possession of the accused who was the resident of the neighbouring village within three days of the occurrence, it was held that it could be presumed that he had known or had reason to believe that the properties were the stolen properties of the dacoity and as such his conviction under [section 412, IPC, 1860](#), was quite in order.^{460.} The same principle was upheld by the Supreme Court to say that where property looted in a dacoity was recovered from the accused very soon after the dacoity, the accused could not be convicted under section 395 but his conviction under [section 412, IPC, 1860](#), would be quite in order.^{461.} Recovery at the instance of the accused persons of stolen property shortly after a dacoity has been held by the Supreme Court as sufficient for a conviction under this section.^{462.}

[s 412.2] Conviction under section 395 and section 412;-

When the accused was convicted of having committed dacoity there could not be any further conviction under section 412.⁴⁶³ Even though dacoity is proved, conviction under section 412 is maintainable.⁴⁶⁴ In *Mohan Chetri v State of West Bengal*, it was held that conviction under sections 412 or 411 is not permissible simultaneously with conviction under sections 395 or 394, as the case may be, in respect of the same accused.⁴⁶⁵

⁴⁵⁷. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

⁴⁵⁸. *PB Soundankar v State of Maharashtra*, (2013) 1 SCC 635 [LNIND 2012 SC 759] .

⁴⁵⁹. *PB Soundankar v State of Maharashtra*, (2013) 1 SCC 635 [LNIND 2012 SC 759] ; *Narayan Prasad v State of Madhya Pradesh*, AIR 2006 SC 204 [LNIND 2005 SC 881] : (2005) 13 SCC 247 [LNIND 2005 SC 881] ; *Rafi v State of Uttaranchal*, 2012 Cr LJ. 4012 (Utt)-where looted property was recovered from possession of accused persons conviction under section 396 and 412 was held proper.

⁴⁶⁰. *Ishwari*, 1980 Cr LJ 571 (All).

⁴⁶¹. *Amar Singh*, 1982 Cr LJ 610 (SC) : AIR 1982 SC 129 .

⁴⁶². *Lachhman Ram v State of Orissa*, AIR 1985 SC 486 [LNIND 1985 SC 77] : 1985 Cr LJ 753 : (1985) 2 SCC 533 [LNIND 1985 SC 77] . *Pawan Yadav v State of Bihar*, 2001 Cr LJ 3626 (Pat), property stolen in dacoity recovered from the house of the co-accused, conviction proper, spent 3 years in jail, single identification of looted property, sentence reduced to the period already undergone.

⁴⁶³. *Mojaffar v State of West Bengal*, 2011 Cr LJ 1249 ; *Dilip Malik v State*, 1991 Cr LJ 2171 (Cal).

⁴⁶⁴. *Mursalim Shaikh v State of West Bengal*, 2011 Cr LJ 1840 (Cal).

⁴⁶⁵. *Mohan Chetri v State of West Bengal*, 1992 Cr LJ 2374 (Cal). *Rafikul Alam v State of West Bengal*, 2008 Cr LJ 2005 (Cal); *Raj Kumar v State*, AIR 2008 SC 3284 [LNIND 2008 SC 2782] : (2008) 11 SCC 709 [LNIND 2008 SC 849] - the Trial Court held that since recovery effected by the prosecution was not in consonance with law, it could not be said that stolen articles of dacoity were found from the accused and consequently charge for an offence punishable under section 412, IPC, 1860 also could not be said to be established. Supreme Court did not interfere with the order of acquittal.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of the Receiving of Stolen Property

[s 413] Habitually dealing in stolen property.

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with ⁴⁶⁶[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

The reason for inserting section 413 by the legislature is clear from the language of the section. The legislature purposely enacted knowing it well that there is already section 411 in respect of offence of dishonestly receiving stolen property knowing it to be stolen. The legislature inserted section 413 in the [IPC, 1860](#) where under it is provided that if a person is habitually dealing in stolen property, he will be charged for offence under [section 413, IPC, 1860](#). The terms of the provision make it clear that "habitually dealing" means there is evidence on record that there are other instances other than the present instance of the accused found to be indulging in the act and he is facing trial, then, it can be said that [section 413, IPC, 1860](#) is attracted.⁴⁶⁷ This section punishes severely the common receiver or professional dealer in stolen property.

⁴⁶⁶. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

⁴⁶⁷. *State v Waman Gheeya*, [2007 Cr LJ 3614](#) (Raj).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of the Receiving of Stolen Property

[s 414] Assisting in concealment of stolen property.

Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

This section requires two things—

1. Voluntary assistance in concealing or disposing of or making away with property.
2. Knowledge or reason to believe that such property is stolen property.

The section is intended to penalise the person, who deal with stolen property in such a way that it becomes difficult to identify it or use it as evidence. It is not necessary to establish that the property was the subject matter of any particular theft. It would suffice if the prosecution can establish that the accused had knowledge or "had reason to believe" that the property is stolen one. All that the prosecution is required to establish is that the accused rendered help in either concealment or disposal of the property, which he had reason to believe to be stolen property or had knowledge to believe that it was such.⁴⁶⁸ It is not necessary for a person to be convicted under this section that another person must be traced out and convicted of an offence of committing theft. The prosecution has simply to establish that the property recovered is stolen property and that the accused provided help in its concealment and disposal.⁴⁶⁹

[s 414.1] CASES.—

The accused was the driver of a taxi, which was carrying several persons who had hired it. While on its way the taxi stopped at a place for some reason, not known, and two of the passengers got down from the taxi and within a distance of about three and a half yards from the taxi they suddenly and without premeditation attacked, injured and robbed a man of his purse containing about Rs. 50. The robbers then boarded the taxi and the driver, in spite of the cries of the victim, drove away as fast as he could. It was held that the driver assisted the robbers in making away with the money so robbed and was guilty under this section.⁴⁷⁰ A person who helps the disposal of stolen property by buying the same himself has been held to be guilty of the offence under the section.⁴⁷¹

468. *Sayyed Issaq v State of Maharashtra*, [2008 Cr LJ 2950](#) (Bom).

469. *Ajendranath*, [AIR 1964 SC 170](#) [[LNIND 1963 SC 126](#)] : [\(1964\) 1 Cr LJ 129](#) .

470. *Hari Singh*, [\(1940\) 2 Cal 9](#) .

471. *Bhanwarlal v State of Rajasthan*, [\(1995\) 1 Cr LJ 625](#) (Raj).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Cheating

[s 415] Cheating.

Whoever, by deceiving any person¹, fraudulently or dishonestly induces the person so deceived to deliver any property² to any person, or to consent that any person shall retain any property,³ or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived,⁴ and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property,⁵ is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

ILLUSTRATIONS

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A

cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

COMMENT—

In most of the foregoing offences relating to property the offender merely got possession of the thing in question, but in the case of cheating he obtains possession plus property in it.

The authors of the Code observe: "We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained; that is to say, in all cases where the intention of the person who has by deceit obtained the property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property if its object is only to cause a distribution of property which the law recognizes as rightful.

"We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money, not meaning to repay it; a man who, by false representations, obtains an advance of money, not meaning to perform the service or to deliver the article for which the advance is given; a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

"In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends in all these cases to acquire or retain wrongful possession of that to which some other person has a better claim and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore, there has, according to our definition, been cheating".⁴⁷².

[s 415.1] Ingredients.—

The section requires—

- (1) Deception of any person.
- (2) (a) Fraudulently or dishonestly inducing that person—
 - (i) to deliver any property to any person; or
 - (ii) to consent that any person shall retain any property; or
- (b) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.⁴⁷³. There

are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.^{474.}

In the definition of cheating there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place, he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts the inducing must be intentional but not fraudulent or dishonest.

The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which such a transfer occurs; for these cases generally provision is made in section 417 of the Code. For cases in which property is transferred a more specific provision is made by section 420.

The offence of cheating is not committed if a third party, on whom no deception has been practised, sustains pecuniary loss in consequence of the accused's act.^{475.}

[s 415.2] Cheating and extortion.—

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is that the extortioner obtains the consent by intimidation, and the cheat by deception.^{476.}

[s 415.3] Breach of contract and cheating.—

The distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct, but for which the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution under [section 420, IPC, 1860](#), unless fraudulent or dishonest intention is shown right at the beginning of the transaction, which is the time when the offence is said to have been committed.^{477.} There was allegation from one side that no payment was being made under the contract. The other side pleaded that part payments were made from time to time and the balance was withheld due to non-standard nature of the work and a letter to that effect was issued. The Court said that the controversy was wholly of civil nature. There was total absence of dishonest criminal intention to dupe contractors' right from the inception of the relationship.^{478.} Although breach of contract *per se* would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the Court should not hesitate to exercise its jurisdiction under [section 482 of the Cr PC, 1973](#).^{479.}

The distinction was explained by the Supreme Court in a case involving an agreement for sale of property. The allegation in the complaint was that the seller had not disclosed that one of his brothers had filed a partition suit which was pending. There

was no allegation that non-disclosure of the suit was intentional. The dishonest intention on the part of the accused at the beginning of negotiations was not made out by averments in the complaint. The High Court was wrong in declining to quash the criminal proceedings.^{480.}

The accused promised, propagated and induced the public through advertisements to invest money in a circulation scheme. Double the money was promised to a member who enrolled 14 new members. The scheme was found to be practically impossible. Thus there was an element of cheating.^{481.}

[s 415.4] Dishonest intention at the time of making the promise a *sine qua non* for the offence of cheating.—

To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From mere fact that the promisor could not keep his promise, it cannot be presumed that he all along had a culpable intention to break the promise from the beginning.^{482.}

[s 415.5] Cheating, criminal breach of trust, and criminal misappropriation.—

Cheating differs from the last two offences in the fact that the cheat takes possession of property by deception. There is wrongful gain or loss in both cases and in both cases there is inducement to deliver property. In the case of cheating the dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, the person who comes into possession of but retains it or converts it to his own use against the terms of the contract.^{483.}

Criminal breach of trust and cheating are two distinct offences generally involving dishonest intention but mutually exclusive and different in basic concept. The former is voluntary but the latter is purely on the basis of inducement with dishonest intention.^{484.}

1. 'Deceiving any person'.—Deceiving means causing to believe what is false, or misleading as to a matter of fact, or leading into error. Whenever a person fraudulently represents as an existing fact that which is not an existing fact, he commits this offence. A wilful misrepresentation of a definite fact with intent to defraud, cognizable by the senses—as where a seller represents the quantity of coal to be 14 cwt. whereas it is in fact only eight cwt. but so packed as to look more; or where the seller, by manoeuvring, contrives to pass off tasters of cheese as if extracted from the cheese offered for sale, whereas it is not—is a cheating.^{485.} Deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.^{486.}

It is not sufficient to prove that a false representation had been made but it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.^{487.} Where a party was persuaded