IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.301 of 2003

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Suresh Prasad, Son Of Sri Ganauri Sah, Resident Of Village Saheb Nagar, Police Station – Gaurichak, District- Patna

... ... Appellant/s

Versus

State Of Bihar Through Central Bureau of Investigation (C.B.I.)

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur Ms. Vaishnavi Singh, Adv. Mr. Pranshu, Adv.
For the Respondent/s	:	Mr. Rakesh Kumarachsc
For the CBI	:	Mr. Sourendra Pandey, CBI

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 12-02-2025

1. The appeal is arising out of the judgment in Special Case No. 17/1981/RC No. 40/1981 on the file of Special Judge, CBI, South Bihar, Patna dated 23.05.2003, wherein the appellant was convicted for the offences punishable under sections 120-B and 420 r/w section 34 of the India Penal Code and was sentenced to undergo rigorous imprisonment for two years each. The appellant was arrayed as accused No. 5.

2. The case was registered based on information received from the informant, Shree B.N

Jha, an Inspector of CBI, S.P.E., Patna, through his source. The case was initially registered for offences punishable under the Indian Penal Code, as well as for offences punishable under the Prevention of Corruption Act, 1947. It is alleged in the F.I.R. that some officials of L.I.C. of India in conspiracy with some officials of Central Bank of India, Dak Bunglow Road, Patna and others, dishonestly encashed L.I.C. cheques to a tune of about Rs. 28,00,000/- during the period from July, 1979 to 04.09.1981 under forged signatures of L.I.C. officials of the Divisional Office, Patna, and those cheques were enchashed from United Commercial Bank, Frazer Road, Patna, Bank of Baroda, Frazer Road, Patna, and Central Bank of India, Buddha Marg, Patna after opening the accounts in different fake and fictitious names. The cheques were cleared by the Central Bank of India, Dak Bunglow Road, Patna Branch and the amounts were credited to fake and fictitious account before being subsequently withdrawn by the accused persons. It is further alleged that 128 LIC cheques were stolen, out of which, 83 cheques were encashed through fake accounts and a total of Rs. 32,20,254.56/- was withdrawn from the L.I.C. account.

3. On completion of the investigation, a charge-sheet was filed against all the accused, including the appellant, for the offences punishable under sections 120-B, 420, 467, 468, 471, 477A, 381 of Indian Penal Code along with Sections under sections 5(2) read with 5(1)(c) and (d) of the Prevention of Corruption Act, 1947. However, the accused Sunil Sen Gupta was granted pardon under section 306 of Cr.P.C.

4. During the course of trial, charges were framed against all the accused for the offences punishable under sections 120-B & 420 r/w Section 34 of Indian Penal Code.

5. On behalf the prosecution, P.Ws. 1 to 60 were examined and several exhibits were marked. The trial Court after construing the entire material on record, convicted and sentenced the appellant as stated [supra].

6. On perusal of the judgment, it is evident that the trial Court appreciated the evidences of P.Ws. 2, 14, 20, 23, 36, 46 and 54 and concluded that the appellant Suresh Prasad, who was the brother of the accused Ram Sevak Prasad, addressed a letter to his brother to release the amount from R.D. Sharma, who is prime accused in this case. As the evidence of P.Ws. 2, 14, 20, 23, 36, 46 and 54 corroborate the allegations against the appellant, the trial Court found him guilty of the aforesaid offences.

7. Heard, Mr. Pranshu, the Learned counsel for the appellant as well as Mr. Sourendra Pandey, the Learned counsel for CBI.

8. It is specific contention of the Learned counsel for the appellant that the prosecution has miserably failed to prove the guilt of the appellant for the aforesaid offences and, as such, the conviction and sentence of the appellant are to be set aside. It is also contended by the Learned counsel for the appellant that the entire case revolves around the theft of 128 LIC cheques and their encahshment in the names of fictitious persons by certain officials belonging to LIC. However, the evidence of P.Ws. 2, 14, 20, 23, 36, 46 and 54 does not establish any role of the appellant in proving the offennces under Section 120-B and 420 r/w 34 of Indian Penal Code. There is no iota of evidence on record to prove that the appellant played any role in stealing 128 LIC cheques thereby causing loss of Rs. 32,20,254.56/- to the LIC.

9. It is further contended by the Learned counsel for the appellant that none of the witnesses testified that the appellant played a vital role in the crime, and no documentary evidence supports/corroborates the evidence of any witnesses. The trial Court, ought not have convicted the appellant for the offences punishable under Section 120-B, 420 r/w 34 of Indian Penal Code. Hence, prayed to set aside the judgment of conviction against the appellant. Further, he relied upon the citations of the Apex Court, which shall be considered at the time of appreciation of evidence.

10. On the other hand, the Learned counsel for the CBI contended that the evidence of P.W. 20, the brother of the appellant, disclose about the handwriting of Suresh Prasad, the appellant herein. It is further contended that the search list dated 08.09.1981, which was prepared at the house of accused No.3, Ram Sevak Prasad, was marked as Exhibit 15/N, which contained a reference to a letter addressed by the appellant to accused No. 3. Therefore, it proves that the appellant addressed a letter to his brother for the recovery of the amount from the prime accused, R.D. Sharma. Thus, there is no error or irregularity in the judgment of the trial Court and prayed to confirm the judgment.

11. The points for determination in this appeal are that:-

(i) Whether the prosecution was able to prove the guilt of appellant for the offences punishable under Sections 120-B, and 420 r/w Section 34 of Indian Penal Code?

(ii) Whether the trial Court has rightly convicted the appellant for the aforesaid offences?

12. In order to determine the above said points, it is necessary to re-appreciate the evidence on record.

13. It is important to note that Shree B.N. Jha Inspector of CBI, S.P.E., Patna registered the case against the appellant and others, basing on the information received by him. It is the case of the prosecution that the L.I.C. cheques had been stolen by some officials, who subsequently encashed an amount of Rs. 32,20,254.56/-, causing wrongful loss to the LIC of India.

14. The FIR was registered on 05.09.1981 and the prime accused, R.D. Sharma was remanded to judicial custody on 07.09.1981. On completion of the investigation, a charge-sheet was submitted on 21.04.1983. The trial Court framed the charges on 10.01.1984 and the judgment was rendered on 23.05.2003. It took almost 22 years to conclude the trial from the date of registration of the case.

15. It is relevant to mention that the entire allegation against the appellant is that he was the brother of accused No.3, Ram Sevak Prasad, a daily wager at LIC. During the search of residential premises of accused No. 3 i.e. Ram Sevak Prasad, the Investigating Officer seized some documents vide search list dated 08.09.1981, and he had made references to six items, including a letter in Hindi, addressed by the appellant to his brother, accused No.3 for the realization of amounts from the prime accused.

16. The evidence of P.W. 2/ Mangal Ram, disclose that he was a typist in the Department of Science and Technology, Patna. He typed the sanction order of the appellant, on the dictation of Dr. S.N. Sinha, Director of the Department of Science and Technology, Government of Bihar, which bears a signature and was marked as Exhibit 1/1.

17. The evidence of P.W. 14/ Arun Kumar Malik disclose that he was working as clerk in the Bank of Baroda, Main Branch, Patna and that one S.C. Mathur and Sanjiv Kumar were working as cashier-cum-Clerks in the said bank. He recognized the handwriting and signatures of S.C. Mathur and Sanjiv Kumar. However, nothing can be proved from the evidence of this witness against the appellant. Though, it is specifically mentioned in the judgment at paragraph 14 that the evidence of P.W. 14 corroborated with the other witnesses to prove the case against the appellant.

18. The evidence of P.W. 20/ Surendra Prasad, the brother of the appellant, disclose that he was also working as a daily wage labourer in the office of LIC along with his cousin, Ram Sevak Prasad (accused No.3). As he did not support the case of the prosecution in any manner, it is relevant to mention that the brother of the appellant/P.W. 20 turned hostile and the letter confronted to the witness, could not be marked by the prosecution. In the cross examination by CBI, P.W. 20 admitted that he recognized the handwriting and signature of the appellant but did not recognize the handwriting of the appellant on the letter that was confronted to him.

19. P.W. 23/ V.N.K. Sinha, testified that he was posted as Assistant Marketing Officer in Patna, however, his evidence does not specify in which office, he was working. His evidence further disclose that his superior officer instructed him to be present at the CBI office, where, in his presence, the appellant's specimen signature was taken by Inspector, R.K. Singh on 24 sheets, which were collectively marked as Exhibit 16/B. In the cross examination, P.W. 23 testified that he did not remember whether there was any written order for him to appear before CBI and that he had never visited the CBI office prior to that date. He also stated that he had not seen the accused either before or after it. On perusal of the list of evidence accompanied with the chargesheet, it is evident that this witness was not listed as a witness. There is no record as to how he was examined before the Court.

20. The evidence of P.W. 36/ Shri M.P. Pandey, who was the Branch Manager of the Corporation Bank, disclose that he has not testified anything against the appellant, therefore, this Court does not find it necessary to reiterate his evidence.

21. P.W. 46/ Shri Chandra Mohanlal Das, was a head clerk, working in Science and Technology

Department. His evidence disclose that the appellant was posted as a steno in the department, and he recognized the handwriting and signature of the appellant. The joining letter, permission to pay, application for permission to take examination, arrest notice application and the application for leave which are alleged to be the handwriting of appellant, were marked as Exhibit 28, 28A, 28B, 28C and 28D, respectively. In cross examination, P.W. 46 testified that there were 60-65 staffs/members and that he was aware of everyone's handwriting and signatures.

22. The last piece of evidence which relied upon by the trial Court is P.W. 54. P.W. 54/ H.S. Tuteya was the Deputy Government Examiner of Questioned Document. His evidence disclose that he had received the questioned documents, sample writings and admitted handwriting related to this case through the Superintendent, CBI Patna, dated 15.11.1981. He examined 569 questioned documents and received 516 sample documents and 315 admitted documents relating to 14 persons. He further testified in para No. 20 that the person who wrote the sample writings S-352 to S-375 and admitted writings A-255 to A-260, also wrote the disputed writing Q-540. The person referred to in paragraph No. 20 is Suresh Prasad.

23. P.W. 56 is the Investigating Officer, his evidence disclose that the FIR was registered on 05.09.1981, and he took up the investigation, recorded statements of the witnesses, seized documents, sent them to the Government for examination to compare the admitted signatures with the questioned signatures. He also conducted a Test Identification Parade of some of the accused persons. As per his evidence, 124 cheques were stolen from LIC, Divisional Office including one cheque book of 25 cheques, another book of 100 and three loose leaf cheques. However, his evidence contradicts itself regarding the number of cheques stolen, as he mentioned 124 cheques in one instance, and 128 cheques in another instance. Further his evidence disclose that out of 125 cheques, 83 were encahshed and 68 were recovered. In the cross examination, P.W. 56 testified that his investigation did not find any evidence against the appellant regarding the encahment of any cheques nor he did receive any information suggesting that the appellant had helped anyone in enchashing cheques or in opening any bank account. He also testified that no documentary evidence was found indicating that the appellant worked with the prime accused R.D. Sharma. Furthermore, there was neither any communication from the prime accused, R.D. Sharma, to the appellant nor from the appellant to R.D. Sharma.

24. The entire case of prosecution is that the 128 cheques belonging to LIC were stolen by some LIC officials and fictitious bank accounts were opened under fake names wherein these cheques were deposited and subsequently encashed amounting to Rs. 32,20,254.56/-.

25. On perusal of evidence of P.Ws. 2, 14, 20, 23, 36, 46 and 54, it is evident that none of the witnesses stated any criminal conspiracy or cheating committed by the appellant.

26. The cardinal principles of criminal law is that the burden is on the prosecution to prove the guilt of the accused beyond a reasonable doubt and the accused shall be presumed to be innocent until the guilt is proven. It is the duty of the prosecution to connect the crime with that of the accused. It is necessary to appreciate the citations relied upon by the Learned Senior counsel for the appellant at this juncture.

27. In the case of **Mariam Fasihuddin Vs. State by Adugodi Police Station** reported in **AIR 2024 Supreme Court 801,** their Lordships have held at Para Nos. 10, 11, 12, 13, 16, 18, 19, 21, 22, 23, and 24, which reads as follows:-

> ***10***. *Section 420 Indian Penal Code provides that 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 valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415*

Indian Penal Code distinctly defines the term 'cheating'.

The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as 'cheating' if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

***11**. It is thus paramount that in order to attract the provisions of Section 420 Indian Penal Code, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property.*

***12**. It is well known that every deceitful act is not unlawful, just as not every unlawful act_is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 Indian Penal Code. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss.2'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or* *any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.*

***13**. The term 'property' employed in Section 420 Indian Penal Code has a well defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The Indian Penal Code itself defines the term 'moveable property' as, "intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth." Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.*

***16**. The crux of Respondent No. 2's allegations is that the Appellants purportedly forged his signature on the passport application submitted to obtain the minor child's passport. Assuming the allegation to be accurate, it would undoubtedly constitute an unlawful act. However, as set out earlier, it is crucial to underscore that not every unlawful act automatically qualifies as 'deceitful'. In the peculiar facts and* *circumstances of this case, the Appellant-wife seems to have breached the notion of mutual marital trust and unauthorizedly projected Respondent No. 2's consent in obtaining the passport for their minor child. It, however, remains a question as to how such an act can be labelled as 'deceitful'. The motivations prompting either of the Appellants to procure a passport for the minor child were not rooted in deceit. Furthermore, the grant of passport to the minor child did not confer any benefit upon the Appellant wife, nor did it result in any loss or damage to Respondent No. 2. In the same vein, Appellant No. 2, being the father of the Appellant-wife and assisting in securing the passport for the child, derived no direct or indirect benefit from this action.*

***18**. Respondent No. 2, the biological father and natural guardian of the minor child, is positioned as such in relation to the grant of a passport to his son. This grant can be best characterised as the minor child's acquisition of property. Since the gain by the minor child is not at the cost of any loss, damage or injury to Respondent No. 2, both the fundamental elements of 'deceit' and 'damage or injury', requisite for constituting the offence of cheating are conspicuously absent in this factual scenario.*

***19**. Conversely, can the Appellant-wife, being the natural mother of the child and a natural guardian, be accused of acting 'dishonestly' when applying for the passport of her minor child? A passport, is an authorised instrument which enables a person to travel outside the country of his origin. In this case, the passport was admittedly issued in favour of the minor child. Whether it was stolen by Respondent No. 2 or misplaced, is wholly immaterial to the present discussion. The grant of passport to the minor child is nothing but a right conferred upon him by statute. The passport is meant to facilitate him to accompany his mother to London and stay with his father. However, there is not even a whisper of allegation or suggestion that the passport was obtained to the detriment of the child's wellbeing. The underlying intent of obtaining the passport was, ironically, essential for the Appellant-wife and minor child to live together with Respondent No. 2, on whose instructions the passport was statedly obtained. Conversely, it is the actions of Respondent No. 2 that have seemingly deprived the minor child of his right to seek the care and company of his father, as the passport was allegedly taken away by Respondent No. 2 in a clandestine manner.*

***21**. The offence of 'forgery' under Section 468 Indian Penal Code* *postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 Indian Penal Code states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.*

22. *there are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely: (I) that the accused has fabricated an instrument and, and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply, put the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.*

23. *The offences of 'forgery' and 'cheating' intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. Having extensively addressed the aspect of dishonest intent in the context of 'cheating' under Section 420 Indian Penal Code, it stands established that no* *dishonest intent can be made out against the Appellants. Our focus therefore will now be confined, for the sake of brevity, to the first element, i.e., the preparation of a false document. The determination of whether the Appellants prepared a false document, by forging Respondent No. 2's signature, however, cannot be even prima facie ascertained at this juncture. Considering the primary ingredient of dishonest intention itself could not be established against the Appellants, the offence of forgery too, has no legs to stand. It is also significant to highlight that the proceedings as against the concerned Passport Officer, who was implicated as para 26. Accused No. 4, already stand quashed. In such like situation and coupled with the nature of allegations, we are unable to appreciate as to why the Appellants be subjected to the ordeal of trial.*

***24**. That apart, there are glaring procedural irregularities that have been overlooked by the Trial Magistrate, which warrants examination. It is extremely important to delve into these improprieties since the supplementary chargesheet filed by the investigating authority included the offence of 'forgery' under Sections 468 and 471 Indian Penal Code.*

Questions overlooked by the lower courts:

28. The above citations squarely apply to the facts and circumstances of the case. It is for the prosecution to prove that the appellant has cheated and dishonestly received any property for himself.

29. In the present case, the allegation against the appellant is that he addressed a letter to accused No. 3 Ram Sevak to release the amount from prime accused. However, the letter was not brought on record by the CBI, for reasons best known to them. Except for the allegation that the appellant addressed the letter to his brother for releasing the amount from R.D. Sharma, there is no other evidence on record to prove or connect the appellant to the crime. Furthermore, the evidence of the Investigating Officer, P.W. 56, clearly disclose that there is no other evidence against the appellant to prove the charges under Section 120-B or under Section 420 r/w Section 34 of Indian Penal Code. As stated (Supra), Section 420 of Indian Penal Code envisages cheating dishonestly inducing to delivery of property. The prosecution has miserably failed to establish that the appellant induced any person, received any property either for himself or for any person, or altered or destroyed any valuable security. In the absence of any such material, the trial Court ought not to have convicted the appellant for the offences punishable under Section 120-B and Section 420 r/w Section 34 of Indian Penal Code.

30. Admittedly, the second Investigating Officer or the informant, who was the police official in this case, was also not examined, and none of the witnesses identified the appellant, in order to connect him with that of the crime.

31. In view of the aforesaid discussion, this Court is of the considerable view that the prosecution has miserably failed to prove the guilt of the accused for the offences punishable under Sections 120-B, 420 r/w 34 of Indian Penal Code. Therefore, the judgment of conviction and sentence passed by Special Judge CBI, South Bihar, Patna in Special Case No. 17/81 of R.C. No. 40 of 1981 is liable to be set aside, and the appellant is acquitted of the aforesaid offences.

32. The record reveals that the appellant was enlarged on bail by the Court vide order dated 25.06.2003. Hence, the bail bonds of the appellant shall stand cancelled.

33. In result, the appeal is allowed.

(G. Anupama Chakravarthy, J)

Amandeep/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.03.2025
Transmission Date	19.03.2025