

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.297 of 2003**

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Vidya Nath Sharma, S/o Sri Amar Nath, Resident of 2/145 Kabitola, Ram Nagar, Police Station- Ram Nagar, District- Varansi (UP)

... .. Appellant/s

Versus

State Of Bihar Through SPE/ CBI, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Sanket, Adv. Ms. Jaya Sonam, Adv.
For the Respondent/s	:	Mrs. Nivedita Nirvikar, Sr. Adv. (SC, CBI) Mr. Pravin Kumar, Adv. Mr. Rakesh Kumar, SC CBI

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT**

Date : 22-01-2025

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 468, 120-B and 420 r/w section 34 of the India Penal Code and was sentenced under sections 120-B and 420 r/w 34 of the IPC to undergo rigorous imprisonment for three years each. Further, he was sentenced under section 419 of the IPC to undergo rigorous imprisonment for two years and under section 468 of the IPC to undergo rigorous imprisonment for a period of three years. He was also sentenced to pay



a fine of Rs. 25,000/-, and in default of payment to suffer simple imprisonment for a period of six months.

2. It is pertinent to mention that charges were framed against the appellant for the offences punishable under sections 120-B, 420 r/w 34 of the I.P.C., 419 of IPC and 468 of IPC, however, the conviction was only for offences punishable under sections 468, 120B, and 420 r/w 34 of IPC but not for the offence punishable under section 419 of the IPC. Nevertheless, despite the absence of conviction under section 419 of the IPC, the trial Court sentenced the appellant to undergo rigorous imprisonment for a period of two years for the offence punishable under section 419 of IPC.

3. 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 Bungalow 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 encashed 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 Bungalow 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.

4. 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 IPC along with Sections under sections 5(2) r/w 5(1)(c) and (d) of the Prevention of Corruption Act, 1947. However, Sunil Sen Gupta was granted pardon u/s 306 of Cr.P.C.

5. During the course of trial, charges were framed against all accused for the offences punishable under sections 120B & 420 r/w Section 34 of IPC. However, the trial Court also framed charges against the appellant for the offences punishable under Sections 419 and 468 of IPC. The content of the charges was read over and explained to him but the appellant pleaded not guilty and claim to be tried.

6. 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].

7. On perusal of the judgment, it is evident that the trial Court appreciated the evidences of P.W.



4, P.W. 56 and P.W. 58 and concluded that the appellant Vidya Nath Sharma @ Chunnu, who is the nephew of R.D. Sharma, is the prime accused in this case. Appellant was found at the residence of R.D. Sharma, and they both tried to destroy the evidence by burning some papers. However, upon reconstruction, the CBI officials found that the account opening forms and specimen signature cards of Canara Bank were in the name of Ram Bhajan Lal, a fictitious person and on the name of another individual, Shiv Nath Sharma. The column for the introducer was signed under Vidya Nath Sharma in the name of Shiv Nath and as the evidence of P.Ws. 8, 56 and 58 corroborates these allegations, the trial Court found him guilty for the aforesaid offences.

8. Heard, Mr. Mrigank Mauli, the Learned Senior Counsel for the appellant as well as Ms. Nivedita Nirvikar, the Learned Senior counsel for the CBI.

9. 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 is to be set aside. It is also contended by the Learned Senior counsel that the entire case revolves around the theft of 128 LIC cheques and their encashment in the names of the fictitious persons by some of the officials belonging to LIC. However, the evidence of P.Ws. 4, 56 and 58 does not establish that the appellant encashed any amount pertaining to the stolen 128 cheques, causing a loss of Rs. 32,20,254.56/- to LIC. It is also contended by the Learned Senior counsel that none of the witnesses testified that the appellant was along with R.D. Sharma, on the date of crime or that he attempted to destroy the evidence by burning the documents and in the absence of such evidence the trial Court ought not have convicted him for offences punishable under Sections 420 or 468 of IPC. He further contended that there is no evidence on record to prove that the appellant conspired with the other accused to obtain wrongful gain from the LIC of India. He further contended that in the absence of any such evidence, the judgment of the trial Court



should be set aside, as far as this appellant is concerned. The Learned Senior counsel also relied upon the judgment of the Hon'ble Apex Court, which shall be considered at the time of appreciation of the evidence.

10. On the other hand, the Learned Senior counsel for the CBI contended that the evidence of P.W. 4 clearly disclose that Vidya Nath Sharma @ Chunnu opened an account in the name of Shiv Nath, for which P.W. 4 was the introducer and he introduced him to the Bank, at the instance of the prime accused, R.D. Sharma, which clearly disclose that fake bank accounts had been opened by the appellant and, therefore, the trial Court has rightly convicted him for the offences punishable under Sections 120B, 420, 419 and 468 of the IPC and also sentenced him for the said offences. She further contended that the evidence of P.W. 4 corroborates with the evidence of P.W. 58 to prove that the bank account was opened in Canara Bank, wherein the appellant in the name of Shiv Nath made deposits in the said bank on 23.04.1981, 27.04.1981 and



27.03.1981 to the tune of Rs. 601/-, 500/- and 101/- respectively and later Rs. 1000/- were withdrawn from the said account on 15.06.1981. Therefore, the said deposit of amounts and subsequent withdrawal clearly disclose that the appellant was using the bank account under the fictitious name of Shiv Nath.

11. The point for determination in this appeal is- (i). Whether the prosecution was able to prove the guilt of appellant for the offences punishable under Sections 120B, 419, 468 and 420 r/w section 34 of IPC? and (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 prepared 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 was that the appellant was the nephew of the prime accused, R.D. Sharma and during the search of the residential premises of R.D. Sharma, he bolted the main door from inside and attempted to burn some papers and that some of those papers were partly burnt which were seized by the CBI and upon reconstruction, they were found to be the account opening forms and specimen signatures of Canara Bank for an account opened in the name of Ram Bhajan Lal, a fictitious person. It was also alleged that the accused R.D.



Sharma intended to open a fake account in the name of Ram Bhajan Lal. The column for the introducer was signed by the appellant Vidya Nath Sharma under the fictitious name of the Shiv Nath. However, on perusal of the charge, it is evident that the allegation made against the appellant was not framed as a charge. Admittedly, the charge was framed against the appellant on 10.01.1984, in spite of non-sufficiency of the charge for the allegations against the appellant, the prosecution did not make any effort to alter the content of the charge.

16. Section 216 of Cr.P.C. gives ample power to the Court to alter the charge at any time before the judgment is pronounced. The charge-sheet do not disclose any specific allegation against the appellant regarding conspiracy or cheating. It only alleges that the appellant had signed the account opening form in the name of Shiv Nath which was a fictitious account in the name of Ram Bhajan Lal.

17. The evidence of P.W. 4/ Subhash Chandra Das who is the owner of Das TV Center,



disclose that in the month of March, 1981, he along with his family travelled to Kathmandu and the accused R.D. Sharma along with his family and the appellant also travelled on the same plane. It is specifically testified by P.W. 4 that he know the nephew of R.D. Sharma by the name Chunnu and identified him in Court. He further testified that he had an account in Canara Bank, Budhha Marg, Patna and he was the introducer for the appellant at the instance of R.D. Sharma. He also deposed that he do not know the real name of the appellant but that account was opened in the name of Shiv Nath and the appellant made his signature as Shiv Nath.

18. Exhibit 3 is the bank account opening form. Ext. 3/1 is the signature under the name of Shiv Nath and the Ext. 3/2 is the signature of the introducer i.e P.W. 4. Except this, there is no other evidence on record to prove that Vidya Nath Sharma is Shiv Nath and that he signed the opening form in the name of Shiv Nath.

19. 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 send 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 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 encashed and 68 were recovered.

20. P.W. 56/ Raj Kishore Singh did not mention any role of the appellant in his evidence.

21. The other evidence on record is that of P.W. 58/ Pinak Ghoshal who was the Branch Manager of Canara Bank at the time of the occurrence i.e. in the year 1981. He testified that Account No. 774 was in the name of Shiv Nath with the address as "Care



of Das TV, Budhha Marg, Patna" and the P.W.4 was the introducer. His evidence further disclose that amounts were deposited in the said account on 23.04.1981, Rs. (601/-), on 27.04.1981, Rs. (500/-) and on 27.03.198, Rs. (101/-) totalling Rs. 1202/- and three paying slips were marked as Exhibit 35, 35/A and 35/B respectively. His evidence further disclose that a withdrawal slip, dated 15.06.1981 for an amount of Rs. 1000/- was signed under the name of Shiv Nath. The said withdrawal slip is marked as Exhibit 36. He further testified that the opening form in the name of Ram Bhajan was badly torn and shattered into pieces and as such, it could not be marked as an Exhibit before Court. The evidence of P.W. 58 only disclose that one Shiv Nath had an account bearing No. 774, with the address "Care of Das TV, Buddha Marg, Patna" and that S.D. Das/ P.W.4 was the introducer. He further testified the details regarding the deposit and withdrawal of amount. However, no stolen cheques were deposited in the said account.



22. 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/-.

23. On perusal of the evidences of P.Ws. 4, 56 and 58, it is evident that that none of the witnesses stated any criminal conspiracy, cheating or forgery committed by the the appellant.

24. 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.

25. In the case of **Hari Sao and another vs. State of Bihar reported in 1969 (3) SCC 107,**



their Lordships have held at Para Nos. 5, 7 and 10
which reads as follows:-

5. Under Section 415 of the Indian Penal Code a person is said to cheat when he by deceiving another person fraudulently or dishonestly induces the person so deceived to deliver any property to him, or to consent that he shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was 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. There can be no doubt that the appellants had by deceiving the Station Master induced him to deliver a railway receipt which could be used as a valuable security; but assuming that the appellants thereby induced the Station Master to make out the railway receipt it will still have to be shown that the making out of the receipt was likely to cause damage or harm to the railway or the Station Master.

7. It is therefore clear that the railway administration may be liable for loss, destruction or non-delivery of the goods under Section 73 if it fails to use reasonable foresight and care in the carriage of the same and would also be similarly liable even in respect of goods carried at special



reduced rate if there was negligence and misconduct on its part or any of its servants. Such liability on the part of the railways arises whenever it issues a railway receipt. The question therefore arises as to whether the railway ran any additional risk or liability in acting upon the representation of the appellants and mentioning in the railway receipt the goods consigned were said to be 251 bags of chillies when in fact they were only 197 bags of straw. There can be little doubt that the railway did not run any additional risk. In case the goods were consumed by fire or even stolen from the wagon due to any negligence on the part of railway administration the owner would have to prove that he had put on rail 251 bags of chillies. He would also have to prove the weight of the chillies and the approximate value thereof. For this he would have to call evidence to show how and when he acquired the goods and the price he paid for them and exactly what quantity he loaded in the wagons. There would be no presumption that the goods put in the wagon were chillies because the railway did not accept the consignment as such and described it as 251 bags allegedly containing chillies. Nor was there any acceptance of the weight of the goods by the railway. The endorsements. W.A. would negative the plea, if any, that the weight was



accepted by the railway. The endorsement "L/U" emphasised that the loading and unloading being in charge of the consignor the railway could not be held liable for any negligence in loading or unloading.

10. *It appears to us that the false representation made by the appellants in obtaining the railway receipt in the form in which it was issued did not cast any additional liability on the railway and the issue of the railway receipt therefore was not likely to cause any damage or harm to the railway. No question of cheating the railway or the Station Master therefore arose in this appeal and the appeal must be allowed. The appellants are directed to be set at liberty. The fine, if paid, must be refunded.*

The above ratio of the Apex Court squarely applies to the present case on hand. It is for the prosecution to prove that wrongful loss was caused to the LIC due to acts of the appellant.

Admittedly, the prosecution could not connect that any of the en-cash cheques were deposited in the account of the appellant or that of the account of Shiv Nath.

26. In the case of **Doctor Vimla Vs. Delhi Administration** reported in **AIR 1973 Supreme Court 1572**, their Lordships have categorically held



that Sections 463 and 464 of IPC, define the term "false documents." Their Lordships further held in Para No. 5 as well as in Para Nos. 14 and 15 that the words "fraudulently" and "dishonestly" are essential to the definition of "false documents and are intended to defraud the following paragraph reads as follows:-

5. Before we consider the decisions cited at the Bar, it would be convenient to look at the relevant provisions of the Penal Code, 1860:

"463: Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464: A person is said to make a false document First Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document/or part of a document was made, signed, sealed or executed by or by the authority of a person by



whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

The definition of "false document" is part of the definition of "forgery". Both must be read together. If so read, the ingredients of the offence of forgery relevant to the present enquiry are as follows:

(1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority, (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, both mens rea described in Section 464 i.e. "fraudulently and the intention to commit fraud in Section 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of other intentions mentioned in Section 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. The scope of that something more is the subject of many decisions. We shall consider that question at a later stage in the light of the decisions, bearing on the subject. The second thing to be noticed is that in Section 464 two



adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. Section 24 of the Penal Code defines "dishonestly" thus:

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'.

"Fraudulently" is defined in Section 25 thus:

"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise"

The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary Ingredient. Both need not



exist, one would be enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. Should we hold that the concept of "fraud" would include not only deceit, but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of "dishonestly that to satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived. Both need not co-exist.

14. *The other decided cases cited at the Bar accept the necessity for the combination of a deceit by one and injury to the other to constitute an act to defraud and therefore, it is not necessary to multiply citations. No other decision cited at the Bar throws any light on the further question, namely, whether an advantage secured to the deceiver without a corresponding loss to the deceived would satisfy the second condition laid down by the decisions.*

15. *To summarize the expression "defraud" involves two elements, namely, deceit and injury to the*



person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

27. In the case of **Mohammed Ibrahim and Others Vs. State of Bihar and Another reported in 2009 (8) SCC 751**, their Lordships have categorically held in para no 13 to 17, the essential ingredients for an offence under Section 467 and 471 of the IPC relating to forgery and cheating which reads as follows:-

13. *The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and*



registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. *An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:*

(1). *The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.*

(2). *The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.*

(3). *The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.*



In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. *The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.*

16. *There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person*



executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. *When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.*



28. 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 IPC 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 IPC 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 IPC, 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 IPC. 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 IPC 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 IPC 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 IPC 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 IPC 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 IPC, 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 IPC.*

Questions overlooked by the lower courts:

29. The above citations squarely apply to the facts and circumstances of the case. As per the definition of forgery under Section 463, whoever makes a false document or any part of the document with an intention to cause damage or injury to the public or any person is said to have committed forgery.

30. In the present case, the allegation against the appellant that is that he created a false bank account in the name of Shiv Nath, however, the said account does not disclose any injury or damage caused to the LIC amounts. It is evident from the



evidence of P.W. 58 that only Rs. 1202/- was deposited on three occasions by one person named Shiv Nath and Rs. 1000/- was withdrawn, except this evidence, there is no incriminating material on record to connect appellant with the crime. Further there is no evidence on record to prove that the appellant is one Vidya Sharma and acted or opened the account in the name of Shiv Nath. Therefore, the offence of forgery is not attracted.

31. As per the evidence of P.W. 56, the bank account forms, of Shiv Nath was sent to Government Examiner of Questioned Documents for comparison of the admitted and disputed signatures. However, the evidence of the official of Government Examiner of Questioned Documents / P.W. 54 disclose that the signature of Shiv Nath tallied with that of the prime accused Raj Deo Sharma and not with that of the appellant. Therefore, the prosecution has miserably failed to prove that Vidya Nath Sharma signed and opened the account in the name of Shiv Nath, as the forensic and Government Examiner of Questioned Documents report confirms that the signature of Shiv



Nath matches with that of Raj Deo Sharma, not with Vidya Nath Sharma.

32. Section 420 of IPC envisages cheating dishonestly, inducing delivery of property. In the present case, nothing is on record that Vidhya Nath Sharma/ appellant has induced any person or received property dishonestly, either for himself or any person or altered or destroyed valuable security. In the absence of any material, the trial Court ought not to have convicted the appellant for the offences punishable under Sections 120B, 420 r/w 34 and 468 of IPC. Furthermore, while the appellant was not convicted for the offence punishable under Section 419 of IPC, he was nonetheless sentenced to rigorous imprisonment for a period of two years for the said offence which is bad in the eye of law and legally not sustainable.

33. Admittedly, the second Investigating Officer in this case was also not examined and none of the witnesses have identified the appellant as either Shiv Nath or of Vidya Nath Sharma to connect him with that of the crime.



34. 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 120B, 420, r/w 34 of IPC 419 and 468 of IPC. 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.

35. The record reveals that the appellant was enlarged on bail by the Court vide order dated 19.06.2003. Hence, the bail bonds of the appellant shall stand cancelled.

36. In result the appeal is allowed.

(G. Anupama Chakravarthy, J)

Amandeep/
Manish/-

AFR/NAFR	NAFR
CAV DATE	N/A
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