

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 288 of 2017

Amanat Laskar@Kochi @ Amanat Ali Laskar

-Versus-

The State of West Bengal & Anr.

For the Appellant : **Mr. Sibaji Kumar Das,
Mr. Anirudhha Bhattacharyya,
Ms. Anushka Bose,
Ms. Rai Das,
Mr. Uttam Mukherjee.**

For the State : **Ms. Baishali Basu,
Md. Kutubuddin.**

Hearing concluded on : **16.09.2025**

Judgment On : **27.11.2025**

Prasenjit Biswas, J:-

- 1.** The impugned judgment and order dated 30.03.2017 passed by the learned Additional Sessions Judge, 15th Court, Alipore, South 24 Parganas, in Sessions Case No. 87(09)/2003 (Sessions Trial No. 01(07)2006 is assailed in this appeal.
- 2.** By passing the impugned judgment, the present appellant was found guilty for commission of offence punishable under Section

417 of the Indian Penal Code and he was sentenced to suffer rigorous imprisonment for six months along with fine of Rs. 50000/- and in default of payment of fine he has to undergo further rigorous imprisonment for six months.

3. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction passed by the learned Trial Court, the present appeal is preferred at the behest of the appellant.
4. The prosecution case, in a nutshell, is as follows:

“From the month of Magh, 1402 B.S. (corresponding to January–February 1996) up to the date of lodging the formal First Information Report on 23.08.1998, the grandmother of the victim/defacto complainant was allegedly subjected to cheating, having been dishonestly induced to part with her property in favour of the appellant’s father. The written complaint further alleges that during this period, the victim was repeatedly raped by the appellant at her residence, where she lived along with her grandmother at village Sohal Gohalia. It is stated that the appellant obtained the victim’s consent forcibly and fraudulently by holding out a false promise of marriage, and thereafter had sexual intercourse with her on several occasions. As a

consequence, the victim became pregnant and eventually gave birth to a male child. It is further alleged that despite repeated requests made by the victim and her grandmother for the appellant to marry her, he refused to do so. The victim thereafter filed an application under Section 156(3) of the Code of Criminal Procedure before the learned Chief Judicial Magistrate at Alipore, South 24 Parganas. The Court directed registration of the First Information Report, pursuant to which Baruipur P.S. Case No. 200 of 1998 dated 23.08.1998 was initiated under Sections 420/376/120B of the Indian Penal Code against the appellant. Upon completion of the investigation, the Investigating Agency submitted a charge-sheet under the said sections of the Indian Penal Code.”

- 5.** Charge was framed by the Trial Court against this appellant under 420/376/120B of the Indian Penal Code.
- 6.** In course of trial the prosecution examined as many as eight witnesses and also exhibited a number of documents. Neither any oral nor any documentary evidence was adduced by the side of the defence.

- 7.** Mr. Sibaji Kumar Das, learned Advocate appearing on behalf of the appellant, has forcefully contended that the learned Trial Court gravely erred in assessing the evidence on record and failed to note that the essential ingredients necessary to constitute the offence of cheating under Section 417 of the Indian Penal Code were entirely absent in the present case. According to the learned Advocate, Section 417 IPC cannot be invoked unless the prosecution first establishes the basic elements of Section 415 IPC, namely deception at the inception, coupled with fraudulent or dishonest intention. In the instant case, there is nothing in the evidence which points to any such intention on the part of the appellant.
- 8.** Mr. Das, learned counsel has drawn the attention of this Court to the testimony of PW1, the victim herself, who admitted in her cross-examination that she was fully aware that the appellant was already married at the time when she entered into a physical relationship with him. It is, therefore, argued that when the victim was conscious of the appellant's marital status from the beginning, her consent cannot be said to have been obtained on any misconception of fact. In other words, the relationship, if any, was entered into with open eyes and with full knowledge of the circumstances, and was neither the product of deception nor induced by any fraudulent misrepresentation.
- 9.** It is further contended that PW1 herself acknowledged that she was mature, knowledgeable about the consequences of premarital

intimacy, and aware that pregnancy could result from such conduct. These admissions make it clear, according to the learned Advocate, that the alleged sexual relationship was entirely consensual and voluntary, and there was no element of misunderstanding or inducement as contemplated under Section 90 IPC. Therefore, the basic foundation necessary to prove cheating under Section 417 is lacking.

- 10.** Mr. Das has further argued that the law is well settled that a mere failure to fulfil a promise relating to a future uncertain event does not, by itself, amount to cheating unless it is proved that the promise was false from the very inception and was made solely to deceive the other party. Here, no such material has been brought on record. At best, according to the learned Advocate, the case reflects a consensual relationship between two adults, and if the appellant later failed to marry the victim, such failure cannot be converted into an offence of cheating under Section 417 IPC. Where an adult woman willingly enters into such a relationship on a promise of marriage and continues to participate in it over a period of time, it cannot be said, without clear evidence of fraudulent intent that the consent was vitiated; rather, such conduct may indicate indiscretion or imprudence on her part, but not cheating at the behest of the appellant.
- 11.** Learned counsel has also emphasized that the Trial Court failed to properly appreciate that the appellant has already been acquitted of

the charges under Sections 420, 376 and 120B IPC. Once the allegation of rape and fraudulent inducement under Section 420 IPC failed, the Trial Court ought not to have selectively convicted the appellant under Section 417 IPC based on the same set of facts and evidence. The conviction, according to the learned Advocate, is therefore legally unsustainable and contrary to the settled principles governing criminal liability under Section 417 IPC.

- 12.** The learned Advocate has placed considerable reliance on the principles laid down by the Hon'ble Apex Court in case of **Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr.¹**, particularly **paragraph 14**, as well as the decision in **V.Y. Jose & Anr. v. State of Gujarat & Anr.²**, **paragraph 13**. Drawing strength from these authoritative pronouncements, the learned Advocate submitted that an offence of cheating cannot be said to have been established unless all the essential ingredients stipulated under Section 415 of the Indian Penal Code are clearly discernible from the evidence on record. It has been emphasized, on the basis of the aforesaid decisions, that the prosecution must prove: (i) that the accused deceived a person by making a false representation or by any misleading act or omission; (ii) that such deception fraudulently or dishonestly induced the person so deceived to deliver any property to any person, or to consent to the

¹ (2000) 4 SCC 168

² (2009) 3 SCC 78

retention of property by another; and (iii) that the accused intentionally induced such person to do or omit to do an act which he would not have done or omitted if he had not been deceived. The learned Advocate argued that unless these cumulative requirements are specifically satisfied, the offence of cheating cannot be said to be made out. The Trial Court, failed to scrutinize the facts and evidence through the lens of these mandatory ingredients while assessing the culpability of the appellant.

- 13.** According to the argument advanced by the learned Advocate, the prosecution in the present case has completely failed to establish that the appellant had any dishonest or fraudulent intention at the time of making the alleged promise of marriage. It is contended that a subsequent failure to fulfill a promise does not, by itself, justify the presumption that the accused harbored criminal intention right from the beginning. In the absence of clear and cogent evidence indicating that the promise was false and made with the sole object of deceiving the victim, the offence of cheating cannot be said to have been proved.
- 14.** The learned Advocate further submits that the Trial Court, while convicting the appellant, overlooked these essential legal requirements and proceeded to pass the impugned judgment merely on the basis of suspicion and assumptions drawn from probabilities, instead of demanding strict proof of criminal intention beyond reasonable doubt as required under criminal jurisprudence.

It is argued that the prosecution has not succeeded in establishing the charge against the appellant with the degree of certainty required in law, and therefore, the conviction recorded under Section 417 of the Indian Penal Code cannot be sustained.

- 15.** In light of the above submissions, it is contended that the judgment and order of conviction passed by the learned Trial Court deserve to be set aside, and the present appeal may accordingly be allowed.
- 16.** Ms. Baishali Basu, learned Advocate appearing for the State, has forcefully contended that there is no material on record which warrants interference with the impugned judgment and order of conviction passed by the learned Trial Court. She submits that the prosecution case stands firmly established through the consistent and corroborative testimonies of the victim (PW1), her grandmother (PW2), as well as two independent witnesses from the locality, namely PW3 and PW4. According to the learned Advocate, their depositions fully support the allegations articulated in the written complaint and leave no room for doubt regarding the culpability of the appellant.
- 17.** It is the specific contention of Ms. Basu that the appellant, acting in connivance with his father, had deceitfully induced PW2, the grandmother of the victim, to part with her property by dishonestly representing facts and thereby cheating her. Although the appellant has been acquitted of the graver charges under Sections 420/376/120B of the Indian Penal Code, Ms. Basu submits that

his conviction under Section 417 IPC has been rightly upheld by the Trial Court.

- 18.** Ms. Basu. Learned Advocate further argues that the evidence of the victim (PW1) clearly reveals that the appellant secured her consent for sexual intercourse on the false assurance of marriage, which resulted in her pregnancy and ultimately the birth of a male child. This account of PW1, according to the State, finds substantial corroboration in the testimonies of PW2, PW3, and PW4, all of whom lend support to the sequence of events narrated by the victim. The learned Advocate firmly maintains that there is nothing in the evidence of these witnesses that casts any doubt on their credibility, nor is there any contradiction or inconsistency significant enough to undermine the prosecution case.
- 19.** Emphasizing that the learned Trial Court has meticulously appreciated both the oral and documentary evidence, Ms. Basu submits that the essential ingredients of the offence defined under Section 415 IPC stand fully proved. She argues that the judgment is well reasoned, legally sound, and supported by a coherent analysis of the evidence on record. Therefore, according to her, the present appeal lacks any merit and deserves to be dismissed outright, affirming the conviction imposed by the learned Trial Court.

- 20.** I have carefully and anxiously considered the rival submissions advanced by both parties and have meticulously examined all the materials available on record.
- 21.** PW1 is the victim and the de facto complainant whose testimony forms the foundation of the prosecution case. In her evidence, she stated that the father of the appellant had approached her grandmother, PW2, with a proposal that the appellant would marry her on the condition that two cottahs of land belonging to PW2 would be transferred in the name of the appellant. PW1 further deposed that believing such assurance, PW2 executed the transfer of two cottahs of land situated at Champahati in favour of the appellant's father. According to PW1, after this transfer was effected, the appellant grew close to her and told her that since the marriage had been settled between the families, they should develop intimacy. PW1 stated that the appellant represented to her that she was already "his wife," and therefore there was nothing to fear, since their formal marriage would be solemnized in due course of time.
- 22.** PW1 stated that she was persuaded into developing a physical relationship with the appellant, and that the appellant even threatened that if she did not comply, he would withdraw from the marriage altogether. Believing this representation and under the apprehension of losing the marriage prospects, PW1 stated that she consented to sexual intercourse. She further said that such sexual

intimacy occurred 8 to 10 times. PW1 also alleged that after engaging in such sexual relationship, the appellant began avoiding marriage on various excuses. After about seven months, PW2 became aware of the victim's pregnancy and personally approached the appellant and his father to ensure that the marriage was solemnized. However, the appellant refused to marry her. PW1 stated that a village "salish" was convened by the local community to resolve the matter, but the same failed as the appellant was absent. She further stated that when she was approximately seven months pregnant, the appellant married another woman, thereby completely refusing to fulfil his promise to her.

- 23.** However, when the testimony of PW1 was tested in cross-examination, significant admissions emerged that deeply affect the prosecution case. PW1 admitted that she had specifically stated in her written complaint that the appellant already had a wife at the time when he entered into a relationship with her, and that despite knowing this, she continued to maintain intimacy with him. This admission clearly shows that PW1 was fully aware that the appellant was a married man. In such circumstances, it becomes difficult to accept that she entered into the relationship under a misconception of fact. A woman who knowingly engages in a sexual relationship with a man who is already married cannot claim later that her consent was vitiated by deception, as she fully understood

from the beginning that marriage with the appellant was legally uncertain and socially questionable.

- 24.** PW1 further admitted that she was fully conscious that sexual intercourse before marriage was not accepted in their society and that she knew pregnancy could result from such relationship. These statements make it evident that PW1 acted voluntarily, with complete awareness of the consequences of the act. Her own testimony therefore does not support a case of consent obtained by fraudulent misrepresentation as contemplated under Section 90 of the Indian Penal Code.
- 25.** Moreover, an even more serious dent appears in the prosecution's narrative from another admission of PW1 during cross-examination. She admitted that in her FIR she stated that the father of the appellant had purchased the land three years prior to the incident. This is wholly inconsistent with the prosecution's story that the land was transferred immediately before the relationship began, pursuant to a settlement for marriage. If the land was purchased years earlier, as PW1 herself stated in cross examination, the entire theory of a recent transfer of land induced by promise of marriage collapses. This contradiction renders the central prosecutorial claim unreliable.
- 26.** Therefore, the testimony of PW1, when examined as a whole, does not establish that her consent was obtained through deception or fraud. Consequently, the essential ingredients necessary to sustain

a conviction under Section 417 of the Indian Penal Code are not satisfied. The inconsistencies in her statements, together with her admissions demonstrating complete awareness and voluntary participation, make it unsafe to conclude that the appellant obtained consent under misconception of fact.

- 27.** PW2, Sujan Bibi, the grandmother of the victim, was projected as a key witness in support of the prosecution case on the issue of inducement and alleged transfer of land in exchange for a promise of marriage. However, her testimony, when scrutinized in light of her cross-examination and other material on record, is riddled with inconsistencies and omissions that undermine its reliability. According to her examination-in-chief, PW2 stated that the father of the appellant had approached her with a proposal that the appellant would marry the victim provided that two cottahs of her land were transferred in his name. She further stated that believing this promise she executed such transfer of land in favour of the appellant's father. PW2 also deposed that, subsequently, PW1 informed her that she had developed sexual relations with the appellant. Based on this disclosure, PW2 requested the appellant's father to arrange the marriage, but instead of acting on the promise, the appellant's father refused and allegedly insisted that the pregnancy of the victim be terminated. This version was intended to demonstrate dishonest inducement and fraudulent

conduct on the part of the appellant and his family from the very inception.

- 28.** However, when her evidence was tested in cross-examination, several significant weaknesses emerged. First, PW2 admitted that she could not recall how much time had elapsed between the execution of the land transfer and the knowledge of PW1's pregnancy. This inability to give even a rough indication of the timeline weakens the prosecution case, because the prosecution story largely rests on the timing of the land transfer and its alleged purpose. If PW2 herself cannot state whether days, weeks, or months passed between the two events, the existence of a clear causal connection between the alleged promise and the transfer of land becomes doubtful.
- 29.** Secondly, PW2 admitted that during this intervening period she made no complaint before any person, authority, village elder, or institution. If she genuinely believed that the land had been transferred on a solemn assurance of marriage, and if she later discovered that the appellant was refusing to honour the promise, it would be expected that she would raise objection or seek support from the community. Her silence weakens the claim that she felt cheated or deceived at the relevant time and suggests that the allegations may be afterthoughts introduced later.
- 30.** Thirdly, PW2 admitted in cross-examination that she had no grievance at the time regarding alleged dispossession from her

property or the appellant's father taking possession of her house. This statement stands in sharp contrast to the prosecution's narrative and the evidence given by PW2 in her examination-in-chief, where she claimed that the appellant's father not only took possession of her land but also ousted her from the house, forcing her to reside in temporary accommodation. Such a material contradiction goes to the very credibility of her testimony. If dispossession actually occurred, it is highly implausible that she would have had "no grievance" at the time, and her failure to lodge any complaint about such a serious issue raises grave doubts about whether such dispossession took place at all.

- 31.** In addition to this, the prosecution did not produce any documentary evidence, such as the land deed or transfer document, which PW2 claimed to have executed. The Investigating Officer (PW8) admitted that no such document was seized during investigation. This omission is critical because such a document, if it existed, would have been the most concrete piece of evidence supporting PW2's version. The failure to produce or even seize this alleged instrument casts further suspicion on whether the transfer truly took place in the manner currently alleged.
- 32.** PW3, Jakir Hossain, the son-in-law of PW2, has deposed that the father of the appellant had approached PW1 with an offer to purchase a plot of land measuring about two cottahs at a concessional price. In addition to this proposal, he had also

suggested that a marriage would be arranged between the victim and the appellant. According to PW3, following these assurances, the appellant began visiting the residence of PW2 frequently, and over time, a close intimacy developed between the appellant and the victim. It is stated by this witness that this relationship ultimately resulted in the victim conceiving. During cross-examination, PW3 stated that he had informed the local people about the relationship between the victim and the appellant. However, he was unable to recall or specify the names of any of those local persons to whom he had disclosed such information.

- 33.** According to the deposition of PW4 Noor Hossain Mondal, it was initially the father of the appellant who approached PW2 with a proposal that the victim and the appellant should be married. However, this marriage proposal was placed with a condition that PW2 must transfer a piece of land measuring about two cottah in favour of the appellant's family. PW2 accepted this condition, and in pursuance of such agreement, the said land was duly transferred to the father of the appellant. PW4 further stated that following the transfer of the land, the appellant began visiting the residence of PW2 frequently. PW4, on noticing this, approached the appellant's father and requested that necessary steps be taken to solemnize the marriage between the victim and the appellant at the earliest. However, despite such requests, no effort or initiative was taken by the appellant's family to proceed with the marriage. PW4

then deposed that during this period, the appellant developed an intimate relationship with the victim and eventually raped her, as a result of which the victim became pregnant. He further stated that once the pregnancy occurred, the appellant, instead of accepting responsibility, absconded from the locality on the advice of his father. After some time, according to PW4, the appellant returned to the village, but by that time he had already married another woman, thereby abandoning the victim entirely.

- 34.** In cross-examination, PW4 revealed certain aspects that affected the weight of his testimony. He admitted that when the appellant disappeared from the village without marrying the victim, he had disclosed the entire incident to one Jalil Gazi, a resident of the same village. However, the prosecution did not cite Jalil Gazi as a witness, and he was therefore not examined in the case. PW4 also conceded that the police had not made any enquiry from him during investigation. He further acknowledged that he did not inform the police that the appellant avoided marriage on different pretexts and that he was narrating the entire account before the Court for the first time. These admissions during cross-examination showed that the details given by PW4 in Court were never disclosed at the earlier stage of investigation, which created a doubt about why such essential facts were not presented before the investigating agency earlier.

- 35.** PW8, the Investigating Officer, has given evidence that significantly affects the strength and reliability of the prosecution case. He categorically stated that during the course of investigation, he did not seize any deed, document, or written instrument either from the accused or from the de facto complainant. This omission is crucial, because the central narrative of the prosecution rests on the alleged transfer of two cottahs of land by PW2, the grandmother of the victim, in favour of the appellant's father, supposedly as a condition for the appellant marrying the victim.
- 36.** According to the prosecution, this land transfer was not only material but formed the very basis of the inducement allegedly given by the accused and his family. Both PW2 and PW1 have consistently stated in their depositions that the land was transferred pursuant to the assurance of marriage and that the father of the accused subsequently took possession of the property. Moreover, PW2 went further to depose that she had put her signature on stamp papers to execute the land transfer and that thereafter the accused's father occupied her house and land. However, PW8 admitted that no such deed, stamp paper, or document was recovered, seized, or produced in Court. The absence of these documents which is the most vital and direct piece of evidence supporting the prosecution's claim greatly weakens the prosecution case. Had such a document been seized during investigation, it could have conclusively established whether

any transfer took place, under what terms, and whether the prosecution's version regarding inducement had any real foundation. The inconsistencies deepen when the testimony of PW2 is compared with that of the Investigating Officer. While PW2 stated that after transferring her land and house, she was dispossessed by the accused's father and forced to build a small cottage nearby for her residence, PW8 stated in cross-examination that PW2 did not make any such statements before him during investigation. According to PW8, PW2 did not state that she was evicted from her house or that she was compelled to live in a makeshift shelter made of plastic. This contradiction raises doubts regarding whether such events actually occurred or whether they were later embellishments introduced for the first time at trial.

- 37.** Further inconsistencies appear from the FIR lodged by PW1, the victim. It is said by PW1 that she stated in the FIR that the appellant's father had purchased the land three years prior to the incident. This version directly contradicts the prosecution's primary case that the land was transferred as part of a condition laid down immediately prior to the alleged sexual relationship and was a planned inducement linked with the promise of marriage. If the land was purchased three years earlier as per PW1's own version in the FIR, the theory that the transfer was executed on the eve of the promised marriage collapses.

- 38.** Thus, the following discrepancies emerge clearly: (1) No documentary proof of land transfer was collected despite its central relevance to the case, (2) Material improvements appeared in the testimonies of prosecution witnesses which were not stated before the Investigating Officer and the FIR itself contradicts the prosecution's developed narrative regarding when and why the land was transferred. These contradictions, coupled with the absence of primary documentary evidence, seriously undermine the prosecution case and cast substantial doubt on whether any inducement or fraudulent promise of marriage supported by transfer of land actually occurred in the manner alleged.
- 39.** PW1, the victim, in her deposition made a number of admissions that go to the very root of the prosecution case and materially weaken the allegation that her consent for physical relations was obtained under a misconception of fact. She categorically stated that she was fully aware that the appellant was already a married man at the time when the relationship between them commenced. Despite this knowledge, she continued to engage in physical intimacy with the appellant, asserting that he had promised to marry her. However, even if such a promise existed, her own testimony does not demonstrate that she raised the issue of fraud, cheating, or deception before any person, family member, or authority at the relevant point of time. The absence of any immediate complaint or disclosure indicates that the alleged

fraudulent inducement was not treated by her, at that time, as a deceitful act causing her to unwillingly surrender her consent. From her evidence, it is clear that the sexual relationship between the appellant and PW1 was not a singular occurrence but continued on 8 to 10 occasions over a period of time. Such continued physical intimacy, particularly after her admitted awareness of the appellant's marital status, strongly suggests that the relationship was voluntary and consensual. Her own conduct, therefore, does not support a case of consent obtained under fear, pressure, or misconception of fact. In such circumstances, the element of deception necessary to constitute an offence of cheating under Section 417 IPC is not established.

- 40.** PW1 further stated that she was conscious of the moral and social norms of their community, which do not approve of premarital sexual relationships. She also admitted that she was aware that pregnancy could result from such relationship. These statements demonstrate that PW1 engaged in the acts with full understanding of their nature, implications, and consequences. Her testimony, therefore, portrays her as a person who made an informed and voluntary decision to continue the relationship, rather than one who was misled or compelled by fraudulent inducements on the part of the appellant.
- 41.** Thus, from the evidence of PW1 herself, it becomes evident that the physical relations between the parties were consensual and did not

stem from any misconception of fact. Consequently, no offence of deception, cheating, or fraudulent inducement can be attributed to the appellant so as to bring the case within the ambit of Section 417 of the Indian Penal Code.

- 42.** In the case of ***Hridaya Ranjan Prasad Verma (supra)***, the Hon'ble Apex Court has clearly delineated the distinction between a mere breach of contract and the criminal offence of cheating. The Court emphasized that the determinative factor lies in assessing the intention of the accused at the time the inducement was made. While it is permissible for the Court to evaluate the subsequent conduct of the accused to ascertain his initial intention, such subsequent conduct cannot, by itself, be treated as a conclusive or sole test for determining culpability. The Hon'ble Supreme Court held that, in order to bring home a charge of cheating, it must be established that the accused possessed a fraudulent or dishonest intention at the very inception, namely, at the time when the representation or promise was made. A subsequent failure to fulfil the promise, by itself, does not justify the presumption that the accused had a dishonest intention from the very beginning. Mere breach of promise or non-performance of contractual obligations cannot automatically be elevated to the level of a criminal offence without clear evidence demonstrating that the accused never intended to honour the promise at the outset. Thus, the judgment underscores that the essence of the offence under Section 415 IPC

lies in the contemporaneous intention to deceive, and in the absence of such foundational intent, the offence of cheating cannot be said to be established.

- 43.** It is apposite and profitable to refer to the observations of the Hon'ble Apex Court contained in paragraphs 14 and 15 of the said judgment, which are reproduced herein below:

“14. On a reading of the section it is manifest that in the definition 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. 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.

15. In determining the question it has to be kept in mind that 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 this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction that is the time

when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

- 44.** In **V.Y. Jose v. State of Gujarat (supra)**, the Hon’ble Apex Court reiterated the well-settled principle that an offence of cheating cannot be said to be made out unless all the essential ingredients of Section 415 of the Indian Penal Code are clearly established. The Court held that the prosecution must prove: (i) that the accused deceived a person by making a false or misleading representation, or by some other act or omission; (ii) that such deception fraudulently or dishonestly induced the person so deceived to deliver any property, or to consent to the retention of property by another; and (iii) that by reason of such fraudulent inducement, the person was intentionally induced to do or omit to do an act which he would not have done or omitted if he were not so deceived.
- 45.** The Hon’ble Supreme Court made it clear that unless these foundational elements are present, the offence of cheating is not attracted. In the present case, the essential ingredients constituting an offence under Section 415 IPC are evidently absent, and

therefore the allegation of cheating cannot be sustained on the basis of the materials available on record. Paragraphs 13 and 14 of the said report is quoted herein below:

“13. Section 415 of the Penal Code defines cheating as under:

“415. Cheating- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person 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 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, is said to ‘cheat’.”

14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making

promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.”

- 46.** In the present case, the testimony of the victim (PW1) clearly reflects that she was a major, fully conscious of the nature and implications of engaging in a premarital sexual relationship with the appellant. The law recognizes that when a fully grown adult woman, with full knowledge and understanding of the consequences, voluntarily consents to sexual intercourse on the basis of a promise of marriage and continues such relationship over a period of time, the act cannot automatically be termed as one induced by misconception of fact. Rather, such continued intimacy reflects a consensual relationship arising out of mutual desire and willingness, and not a situation where consent was obtained by deceit or coercion. For a promise of marriage to amount to fraudulent inducement under Sections 415 or 417 IPC, it must be shown that the promise was false from the very inception and was made solely with the intention of deceiving the woman and obtaining sexual favours. Where a woman, being a mature adult, willingly enters into a relationship and voluntarily indulges in repeated sexual intercourse over time, knowing fully

that such relationship is not sanctioned by social norms, the conduct cannot be labelled as a consequence of fraudulent misrepresentation.

- 47.** In this case, PW1 herself admitted that she was well aware that the appellant was a married man and yet continued to maintain physical relations with him. Such conduct, by no stretch, indicates a situation where her autonomy or judgment was clouded by deception. Instead, her continued participation shows that the relationship was consensual and borne out of her own volition. Therefore, the circumstances point more towards conscious participation in the relationship rather than a case of cheating or consent vitiated by misconception of fact. It is also significant that the appellant has already been acquitted of the charges under Sections 420, 376 and 120B IPC. These acquittals indirectly nullify the earlier stand of the victim that sexual intercourse was forced or non-consensual. With the charge of rape not proven and the allegation of cheating under Section 420 IPC not sustained, the foundational facts necessary to support the version in her written complaint do not survive. Once the allegation of forceful sexual intercourse or rape falls, the consequential accusation of cheating or fraudulent inducement under Section 415 IPC also does not stand established.
- 48.** In such circumstances, the conviction under Section 417 IPC loses its legal footing. When the material facts and testimony do not

demonstrate that the appellant intentionally deceived the victim into consenting to sexual intercourse, and when the victim's own evidence shows that she knowingly entered into the relationship with full awareness of its implications, the conviction under Section 417 cannot be sustained in the eyes of law. Thus, both in fact and in law, the offence under Section 417 is not made out in the present case.

49. In view of the above facts and circumstances and discussion made above I am of the opinion that the learned Trial Court failed to consider the case in its proper perspective and convicted the appellant on vague surmises and conjectures. The depositions of the prosecution witnesses does not establish the pending ingredients of the offence punishable under Section 415 of the Indian Penal Code and the learned trial Judge came to a finding of the guilt of the appellant without appreciation of evidences brought on record by the side of the prosecution.
50. Accordingly, the instant appeal be and the same is hereby **allowed**.
51. The impugned judgment and order of conviction passed by the learned Trial Court dated 30.03.2017 is hereby set aside.
52. The appellant is on bail. He is to be discharged from his respective bail bonds and be set at liberty if he is not wanted in connection with any other case.
53. In accordance with the mandate of Section 437A of the Code of Criminal Procedure (Section 481 of the Bharatiya Nagarik

Suraksha Sanhita, 2023), it is incumbent upon the appellant to furnish bail bonds, accompanied by suitable sureties. Such bonds, once executed, shall remain in full force and effect for a period of six months, ensuring the presence of the appellant as required by law and securing the due administration of justice.

- 54.** Let a copy of this judgment along with the Trial Court record be sent down to the Trial Court immediately.
- 55.** Urgent Photostat Certified Copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)