

I am of opinion that the learned Subordinate Judge arrived at a correct conclusion and that this appeal also should be dismissed.

A. S. M. A.

*Appeals dismissed.*

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 v.  
 THE  
 SECRETARY  
 OF STATE  
 FOR INDIA.

### CRIMINAL REVISION.

*Before C. C. Ghose and Cuming JJ.*

RAMAN BEHARI ROY

v.

EMPEROR\*

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 April 24.

*Cheating—Enclosing waste paper in insured cover purporting to contain currency notes—Penal Code (Act XLV of 1860), s. 415.*

A person who sends an insured cover, purporting to contain Government currency notes, but which, on receipt by the addressee, is found to contain only a letter advising the despatch of notes, and pieces of waste paper, is not guilty of cheating.

On the 18th November 1920, the petitioner handed over to the Postmaster of the Nilambazar Post Office an insured letter, purporting to contain currency notes to the value of Rs. 800, addressed to one Nobin Chunder Chowdhury, Beliaghata Post Office, Calcutta. The letter was delivered by the latter post office to the addressee's agent, on his signing the receipt slip, and was made over by him to the addressee who, on opening the same, found it to contain only a letter advising the despatch of the notes and pieces of waste paper. It appeared that the sum in question was due by the petitioner to Nobin Chunder. The petitioner

\* Criminal Revision, No. 183 of 1923, against the order of B. N. Ran, Sessions Judge of Sylhet, dated Jan. 24, 1923.

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was put on trial, under s. 417 of the Penal Code, before Moulvie Mahomed Chowdhury, Extra Assistant Commissioner of Karingunge, and convicted and sentenced, on the 18th November 1922, to imprisonment and fine. An appeal against the conviction was dismissed by the Sessions Judge of Sylhet, and the petitioner then obtained the present Rule.

*Babu Manmatha Nath Mookerjee* (with him *Babu Nikunja Behari Roy*), for the petitioner. The acts alleged do not constitute cheating or an attempt to cheat. The harm or damage referred to in s. 415 of the Penal Code must be the proximate result of the act induced. The possibility of a suit is too remote. The receipt slip would not be evidence in the suit of payment of the amount.

*The Deputy Legal Remembrancer (Mr. Orr)*, for the Crown. The facts amount to attempt to cheat, and the Court can alter the conviction to one under s. 417 read with s. 511 : *Arura v. Emperor* (1), *Sadho Lal v. Emperor* (2). The receipt would be evidence in a civil suit of delivery of the cover.

GHOSE AND CUMING JJ. This Rule was issued calling upon the Deputy Commissioner of Sylhet to show cause why the conviction of the petitioner and the sentence passed upon him should not be set aside on the ground that, on the facts alleged by the prosecution, no offence under section 417 of the Penal Code, has been made out. We have heard Mr. Manmatha Nath Mookerjee in support of the Rule, and Mr. Orr on behalf of the Crown, and for the reasons given below, we are of opinion that Mr. Mookerjee's contention must prevail.

The facts alleged by the prosecution, shortly stated, are as follows :—It is alleged that the accused sent to

(1) (1912) 14 Cr. L. J. 435.

(2) (1916) 17 Cr. L. J. 272.

one Nobin Chunder Chowdhury an insured cover purporting to contain eight Government currency notes of Rs. 100 each. The envelope in question, it appears, was handed over by the accused in person to the Postmaster at the Nilambazar Post Office on the 16th November 1920. The cover was received at the Baliaghata Post Office on the 18th November 1920, and was delivered to an agent of the said Nobin Chunder Chowdhury. On the addressee opening the envelope, the same was found to contain a letter advising the despatch of a sum of Rs. 800 and several bits of waste paper: No Government currency notes were found inside the cover. Thereupon the Postmaster of the Beliaghata Post Office was communicated with by the addressee, and the police were also called in.

These facts have been found to be correct by the learned Sessions Judge and, as stated above, the argument on behalf of the petitioner is that, assuming that these facts are correct, no offence under section 417 of the Penal Code has been made out.

Now, in order to find out the ingredients of the offence of cheating, we must turn to section 415 of the Penal Code. The ingredients required by that section are:—

1. Deception of any person.

2 (a) Fraudulently or dishonestly inducing that person—

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation or property.

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Now, in this case, having regard to the facts found, it is difficult for us to say that the person deceived has been induced to deliver any property to any other person, or to consent that the said other person should retain any property, or that the person deceived has been induced to do or omit to do anything which he would not have done or omitted, if he were not so deceived, and which act or omission has caused, or was likely to cause, damage or harm to that person in body, mind, reputation or property. All that the person deceived has been induced to do is that he has signed a receipt acknowledging the delivery of a cover. He has not acknowledged by that the receipt of any sum of money alleged to be contained in the cover. That being so, we are unable to say that the charge of cheating has been brought home to the accused in the circumstances which appear on the record before us.

The result, therefore, is that the Rule is made absolute. The petitioner will be discharged from his bail bond, and the fine, if paid, will be refunded.

E. H. M.

*Rule absolute.*