

APPELLATE CRIMINAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
Johnstone.*

SHER SINGH, Appellant

versus

THE CROWN, Respondent.

Criminal Appeal No. 442 of 1928.

*Indian Penal Code, 1860, sections 417, 418, 419, 420—
Cheating—distinction between simple cheating—and cheat-
ing accompanied by a transfer of property—punishment.*

*Held, that section 417 of the Penal Code is confined to
cases of simple cheating. An accused who obtains property by
cheating is punishable under section 420.*

*Appeal from the order of Rai Sahib Lala Labhu
Ram, District Magistrate, Kangra, dated the 29th
February 1928, convicting the appellant.*

Nemo, for Appellant.

**D. R. SAWHNEY, Public Prosecutor, for Respon-
dent.**

*The order of Mr. Justice Agha Haidar, dated
21st June 1928, submitting the case to a Division
Bench:—*

The facts of this case are clearly stated in the judgment of the learned District Magistrate, Kangra at Dharmsala, and need not be recapitulated here. There cannot be any manner of doubt that the appellant Sher Singh has been masquerading about as a retired *Subedar* and in this way has been receiving various articles of clothing on credit. The story, as told by the complainant in the present case, is true, and it is established that, by holding himself out as a pensioned *Subedar*, the appellant obtained various articles of clothing and *ghee* from the complainant. The learned District Magistrate has con-

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victed him under section 420 of the Indian Penal Code and having regard to his previous convictions, sentenced him to seven years' rigorous imprisonment including three months' solitary confinement.

An appeal has been filed in this Court by Sher Singh against his conviction and sentence through the Jail authorities. He was not represented at the time of the hearing of the appeal, while Mr. Edmunds appeared on behalf of the Crown.

The offence of cheating is defined in section 415 in the Indian Penal Code. I am quoting below only the relevant portion of the section which covers the case before me:—

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

In this connection illustration (a) to section 415 may also be quoted:—

“A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.”

Section 417 runs as follows:—

“Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

Now, cheating having been defined in section 415, we may take it that but for such definition the Legislature would have framed section 417 of the Indian Penal Code as follows:—“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, shall be punished with imprisonment of either descrip-

tion, etc., etc." So far there is no difficulty. But the difficulty arises when we come to section 420, the relevant portion of which runs as follows:—

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“Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person * * * shall be punished with imprisonment * * * which may extend to seven years and shall also be liable to fine.”

In my opinion section 417, as quoted above, after eliminating the word ‘cheats’ and reading the relevant portion of the definition of ‘cheating’ into it, overlaps the opening clause of section 420 of the Indian Penal Code. The result is that an offence which comes under section 417 would also be covered by the opening clause of section 420 as quoted above. I may observe that in other parts of the Code when a particular offence is once defined then the word connoting that offence is used as a term of art, and the sections of the Indian Penal Code, while prescribing punishment do not recite the definition but merely the term which conveys the legal concept of the particular offence. Mr. Edmunds says that section 420 of the Indian Penal Code was the proper section to apply in that it covered cases in which there was delivery of property as a result of cheating and that therefore, the conviction of the appellant under section 420 by the learned District Magistrate was correct.

These sections for many years past have presented this difficulty to me, and the case law on the subject is meagre and in a somewhat unsatisfactory condition.

The earliest case that I can find is in the unreported Criminal Cases of the High Court of Bombay edited by Mr. Ratan Lal, at page 2 of the Report (*Reg. v. Bapu*). The case was decided by Couch and

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Newton JJ. on the 24th of February, 1864. The judgment is a short one and may be quoted *in extenso* :—

“ The accused in cases Nos. 657 and 688 appear to have been charged with cheating under section 415 (apparently a mistake in the print for section 417 of the Indian Penal Code, as section 415 contains only the definition of cheating) of the Indian Penal Code and the facts proved bring the cases within that section although the words of section 420 are also applicable. The Court are of opinion that effect, if possible, should be given to both sections of the Act, and that the offence of cheating accompanied by a delivery of property may be punished under either section. When the case appears to the trying authority to be of a serious nature steps should be taken that it may be sent to the Court of Session and punished under section 420, but the trial and conviction under section 417 by a Magistrate, the charge being framed in the terms of that section is not an excess of jurisdiction which would necessitate the conviction being annulled.”

We find in the same volume at page 96 another decision given by West and Nanabhai JJ. (*Reg. v. Bavaji*) in which the learned Judges observed as follows :—

“ The definition of the offence of cheating in section 415 of the Indian Penal Code embraces some cases in which no transfer of property is occasioned by the deception and some in which such a transfer occurs; for these cases generally a general provision is made in section 417 of the Code; for the cases in which property is transferred a more specific provision is made by section 420 * * * * ”

With due respect to the learned Judges, who decided this case, I am unable to read sections 417 and 420 in the way in which the learned Judges have sought to interpret it. In my opinion the view of law expressed in the earlier case, that cases of deception accompanied by delivery of property may be dealt with under either of the two sections, namely, 417 and 420 of the Indian Penal Code, is correct.

There is a single Bench decision of the Madras High Court [*Setti Rangayya v. Somappa* (1)], in which the learned Judge observes: "Section 417 deals with cheating generally; but section 420 deals with that species of cheating which involves delivery of property or destruction of valuable security. Section 417 prescribes punishment for simple cheating and section 420 lays down the sentence for the aggravated form of the offence." The learned Judge disposed of the case on the question of jurisdiction only and beyond a bare reference to the language of section 415 there is no discussion either of case law or of any general principles in the report.

In two cases decided by me recently, the convictions were under section 420 read with section 75 of the Indian Penal Code. I adopted the line of reasoning as laid down in the Bombay case of the year 1864 quoted above and, imposing the maximum sentence under section 417, in effect took the case out of the operation of section 75 of the Indian Penal Code. The present case is the third which has come before me during the last three or four weeks in which this identical point has arisen. I may observe that in the first case (Criminal Appeal No. 306 of 1928, *Ram Parshad v. The Crown*), neither the appellant nor the Crown was represented before me, and in the second

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case (Criminal Appeal No. 1009 of 1927, *Muhammad Din v. Crown*) only Mr. Mackay represented the Crown, while the appellant was unrepresented. I referred him to the earlier case decided by me and he accepted the view which I expressed in my earlier decision. Mr. Edmunds at the time when the case came up for hearing was not prepared to meet the point dealt with by me in the earlier cases, but took time to study the subject and has submitted a written memorandum of argument. I do not consider it necessary to go into the details of that memorandum ; but I cannot help observing that in my opinion if the case of an accused person can be fully and completely covered by two different penal provisions then as a principle of criminal jurisprudence, he should be punished under a section which carries the lesser penalty. I believe there are authorities in support of this proposition.

As the question is one which crops up frequently and there is no decision of this Court dealing with the point under consideration, I think it desirable that the case should be put up before a bench of two learned Judges of this Court so that an authoritative pronouncement may be made.

JUDGMENT OF THE DIVISION BENCH.

SHADI LAL C.J.

SIR SHADI LAL C.J.—The evidence for the prosecution, which has been believed by the trial Magistrate as well as by the learned Judge who has referred this appeal to the Division Bench, leaves no doubt whatsoever that the prisoner Sher Singh, by falsely pretending to be a pensioned *Subedar*, intentionally deceived the complainant and dishonestly induced him to let the prisoner have on credit certain articles for which he did not intend to pay. The prisoner is, therefore, clearly guilty of the offence of cheating,

and the only question on which we are invited to pronounce our opinion is whether he should be punished under section 417 or section 420 of the Indian Penal Code. The matter is important because, while the latter section prescribes punishment of imprisonment for a term which may extend to seven years, the former makes the offence punishable with imprisonment of only one year and does not, therefore, bring the case within the ambit of section 75, Indian Penal Code, which empowers the Court to inflict an enhanced punishment upon a previous convict.

It will be observed that section 415, Indian Penal Code, merely defines the offence of cheating, but in order to ascertain the punishment for the offence, we must have recourse to the other sections of the Code. Now, we find that section 417 prescribes punishment for the offence of cheating generally, while section 420 punishes that species of cheating which is accompanied with a transfer of property. The latter kind of cheating is an offence of an aggravated character, and the culprit is consequently liable to a severe punishment.

Section 420, Indian Penal Code, being a special provision, must be treated as an exception to the general rule enacted by section 417. Similarly section 418 and section 419 prescribe penalties for other kinds of aggravated cheating. There is, therefore, no conflict between section 417, which must be confined to cases of simple cheating, and sections 418, 419 and 420 which punish cheating of a serious nature. If a case comes within the purview of one of these three sections, the offender must receive the punishment prescribed by it, and he cannot claim that he should receive the lesser punishment provided for by

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section 417 of the Indian Penal Code. It must be remembered that cheating is not the only offence for which different punishments are ordained according to the gravity of the offence committed by the accused. A perusal of section 378 and other sections following it makes it clear that, while simple theft is punishable under section 379, theft of an aggravated character is punishable under section 380, section 381 or section 382, if the offence satisfies the requirements of any of these sections. Another example of the crime, for which a graded punishment is laid down by the Code is dacoity—*vide* section 395, Indian Penal Code (simple dacoity), section 396, (dacoity with murder), and section 397 (dacoity with an attempt to cause death or grievous hurt).

In the present case the appellant undoubtedly obtained property by cheating, and he was consequently punishable under section 420 of the Indian Penal Code. The sentence imposed upon him by the learned District Magistrate is not open to any objection on the ground of illegality or of severity. The appeal preferred by him is accordingly dismissed.

JOHNSTONE J.

JOHNSTONE J.—I agree.

N. F. E. .

Appeal dismissed.
