

**(1942) 08 CAL CK 0017**  
**In the Calcutta High Court**

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|------------------------------------|------------|
| Banamali Charan Bhunia and Another | APPELLANT  |
| Vs                                 |            |
| Dharanidhar Bhunia                 | RESPONDENT |

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**Date of Decision :** 12-08-1942

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 417

**Citation :** AIR 1943 Cal 41

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**Judgement**

1. This is a rule for quashing certain proceedings pending at present before the Sub-Divisional Magistrate, Diamond Harbour, in which the petitioners have been summoned u/s 417, Penal Code, for cheating. The only allegation of cheating is that these petitioners who were being prosecuted previously u/s 408 had induced the complainant "to compromise the ease" as he calls it. Assuming for the present purpose that this is correct, we do not see how it will be possible to prosecute these two (petitioners for cheating. The charge u/s 408 is not compoundable and even if the petitioners made some promise and the case was dropped, in the first place the promise would not be enforceable and secondly, it would always be open to the complainant to have the case revived if the Magistrate was so disposed. Actually it appears in the present case that an attempt was made by the complainant to have a revival of his case and that when this failed some legal adviser suggested to him the present method of applying pressure to the petitioners. It is a method which the learned Sub-Divisional Magistrate should not have allowed to be adopted and he should clearly have dismissed the complaint in the first instance. The rule is unopposed. It is made absolute and further proceedings in the case are quashed.