

**(1929) 01 AHC CK 0057**  
**In the Allahabad High Court**

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| Emperor         | Vs | APPELLANT  |
| Durg and Others |    | RESPONDENT |

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**Date of Decision :** 24-01-1929

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 420

**Citation :** AIR 1929 All 260(1) : 114 Ind. Cas. 733

**Final Decision :** Dismissed

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**Judgement**

1. This is a case in which four persons were convicted by a Magistrate of cheating, an offence u/s 420, I.P.C. That offence is not considered by the law to be one of a minor description and Courts are directed if they arrive at a finding of guilty under that section to inflict some sentence of imprisonment with or without an additional sentence of fine. The Magistrate in this case has found the four accused guilty of inducing the complainant to part with the sum of Rs. 90 in return for their promise to secure the restoration of two bullocks which he had lost, but he has only inflicted a sentence of Rs. 50 fine in the case of each of the accused persons, or in default, six months rigorous imprisonment. This is not a sentence in accordance with law and on the matter being brought to his attention by the Sessions Judge the Magistrate has admitted that he made an error and that error was due to an oversight. The offender convicted u/s 420, I.P.C.

shall be punished with imprisonment and shall also be liable to fine.

2. This means that some sentence of imprisonment must be given and the Court has a discretion to add or refrain from adding a fine, for to the latter an offender is only "liable." We do not think it necessary to direct a retrial.

3. We set aside the proceedings of the Magistrate of the 13th September 1928, that is to say, we set aside the conviction and sentence and direct the Magistrate to proceed to pass a sentence which in his opinion, is called for in the circumstances of the case and which is in accordance with law. Let the reference be returned to the Sessions Judge.