

**(1959) 08 BOM CK 0003**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 302 of 1959

Ramji Lakhamsi Budhadev

APPELLANT

Vs

Harshadrai Nandalal Bhuta and Others

RESPONDENT

---

**Date of Decision :** 21-08-1959

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 415

**Citation :** AIR 1960 Bom 268 : (1959) 61 BOMLR 1648 : (1960) CriLJ 812

**Hon'ble Judges :** Shah, J;Naik, J

**Bench :** Division Bench

**Advocate :** H.P. Dastur, by Attorneys Dastur and Co, for the Appellant; E.B. Ghaswalla, by Attorneys Jeshtaram and Co. and V.T. Gambhirwala, Asst. Govt. Pleader, for the Respondent

---

## Judgement

Shah, J.

(1) The petitioner filed a complaint in the Court of the Presidency Magistrate 19th Court, Bombay charging accused Nos. 1 and 2 with having committed and offence under S. 420 I.P.C and accused No. 3 with having abetted the commissioner of that offence. It was alleged in the complaint to that the third accused persuaded the petitioner to enter into a contract shipping 2000 Tons of oil cakes on board s.s Dmitri Donskoy with the Atlas Engineering Company on a representation that accused Nos 1 and 2 werepartners of that representation and it turned out, after the contract was broken and the consignment was not booked that acused Nos. 1 and 2 confirmed the representation and it turned out, after the constract was broken and the consignment was not partners of the Atlas Engineering Company and that one Babubhai Rikahchand and Lallbhai Babulal Shah were in truth the partner of that firm petitioners would have entered into the shipping contract. Holding that the no prima facie case was made out for issuing process against the accused. the Trial Magistratedischarged the accused and dismissed the complaint. In the view of the learned Magistrate the possibility of the petitioner knowing that the properitors of the Atlas Engineering Company

were not the accused could not on the evidence be excluded and that in any even it could not be said that but for the representation made by accused No. 3 that accused No. 1 and 2 were the partners of the Atlas Engineering Company, the petitioner may not have entered into the said contract. The correctness of the order of discharge is challenged in this revision application.

(2) This is one of those cases in which civil dispute is sought to be litigated in a criminal court under the guise of a charge of cheating. The substance of the complaint is that the petitioner entered into a shipping contract with the Atlas Engineering Company, that that contract was broken and that the persons responsible for committing breach of the contract were accused Nos. 1 to 3 who though they have no interest in the Atlas Engineering Company held accused Nos. 1 and 2 out as partners of that firm. Prima facie such a plea will sustain in a civil court a claim for damage for breach of contract and the petitioner may seek to hold accused Nos. 1 and 2 liable for holding themselves out as partners of the Atlas Engineering Company. An action may also lie in damages against the third accused for the part alleged to have been played by him. But we fail to appreciate how, on the allegations made offence can be made out against the three accused or any of them.

(3) Section 415 I.P.C defines cheating. That Section is substantially in two parts. Deception by fraudulently or dishonestly inducing a person to deliver any property to any person or to consent that any person shall retain property is cheating under the first part of the definition. Deception of any person by 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 is cheating, under the second part. Under the first part one of the important ingredients of cheating is that the act of the accused must be done fraudulently or dishonestly and the act must result in inducing the person deceived to deliver property or consent to retention of property. For the application of the second part two conditions must be fulfilled (i) a must be intentionally deceived to do or omit to do something which he would not otherwise do and (ii) such act or omission causes or is likely to cause damage or harm to the person deceived in body, mind, reputation or property. Section 420, I.P.C is an aggravated form of cheating. If a person cheats another and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security and anything which is signed or sealed and which is capable of being converted into a valuable security, he is liable to be punished under this section. Evidently, in this case on the allegations made there is no delivery of property to any person or the making, alteration or destruction of the whole or any part of a valuable security or anything which is signed or sealed. Nor can it be said that the delivery, if any, is by dishonest inducement. The accused are alleged merely to have induced the petitioner to enter into a contract of consignment of oil cake. An act is done dishonestly if it is done with the intention of causing

wrongful gain to one person or wrongfulness to another person (see section 24 I.P.C. and it is not the case of the petitioner that in inducing the petitioner to enter into a contract, there was any intention to cause wrongful gain to the accused or to cause wrongful loss to the petitioner.

(4) The complaint does not make out a case that by fraudulently or dishonestly inducing the petitioner to deliver any property or to consent to the retention of any property, the petitioner has been cheated. Assuming of the allegations made in the complaint, that but for the representation that accused Nos. 1 and 2 were the partners of the Atlas Engineering Company the petitioner may not have entered into the shipping contract with that firm, an offence of cheating is not committed, unless the representation causes or is likely to cause damage or harm to the victim. The use of the expression "cause" postulates a direct and omission and the harm or damage to the victim. There is in the case nothing in the complaint which may support the contention that damage or harm was caused or was likely to be caused by reason of inducement offered to the petitioner to enter into the shipping contract. The damage may, it all, arise out of the proximate connection between the inducement and the damage or harm to the petitioner arising out of the breach of contract.

(5) The view that we have taken is supported by the view expressed by the Calcutta High Court in Harendra Nath Das Vs. Jotish Chandra Dutt, Where the Manager of a firm was induced by false representation of the accused to accept a bought note from a non-existent firm for the purchase of jute, and to sign a receipt for the note. It was held as to the receipt that the case did not fall within the first part of Section 415 I.P.C. as no loss to property or harm to the manager's reputation resulted proximately and necessarily from the act itself which he was induced to do viz., acceptance of the contract.

(6) There being in this case no direct relation of cause and effect between the representation alleged to be made and the harm or damage to the petitioner as a result of the breach of contract an offence under S. 415 I.P.C. has not been committed in consequence of the accused persuading the petitioner to enter into a shipping contract. The rule is, therefore, discharged.

BD/D.H.Z.

(7) Rule Discharged.