

The to defraud is  
something different  
than



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The definition of forgery in Section 463 is itself subject to the definition of “making a false document” in Section 464 in which the two essential elements are that the act should be done “dishonestly or fraudulently”.

Section 463 specifies several alternative intents whichever of these alternative intents may be applicable, the act itself must be done “dishonestly or fraudulently” to sustain conviction for forgery. The use of the words “dishonestly or fraudulently” in the alternative means that they must be given different meanings. The intention to defraud is something different than the intention to cause wrongful gain or loss. While an intention to cause wrongful gain or wrongful loss of property is necessary for a dishonest act, to do a thing fraudulently, such an intention is not necessary.

Deprivation of property or risk of injury is not an essential element of fraud. A fraudulent act, though intended to deceive, may be wholly unconnected with the wrongful gain or wrongful loss of property, though it must involve the causing of injury, as defined in Section 464. Thus, where a person secures employment by making an alteration substituting his own name in a certificate issued to another the alteration in the certificate is a fraudulent alteration and thus a forgery. Where there is an intention to obtain an advantage by deceit, there is fraud.

An alteration may be fraudulent though it may not be dishonest. In a case of *T. N. Rukmani v.*

*Achyut Menon*, the Supreme Court upheld that the fraudulent intention of the accused could not be proved, so the accused could not be convicted under

Section 465 of I. P. C. Damage or injury to the public or to any person: It is the intent which constitutes the gist of the offence.

It is immaterial whether damage or injury, or fraud is actually caused or not. The offence is complete with intention, it is not necessary that any person, in fact, should be defrauded. An "intent to cause damage or injury to the public" means that an intent to defraud any particular person is not necessary. A man may have an intent to defraud and yet there may not be any person who could be defrauded by his act. Again, there may be an intent to defraud without the power or the opportunity to defraud. The damage or injury intended to be caused may be to the public or to any individual. Thus, an alteration by a police officer in his diary so as to show that he had not kept certain persons under surveillance is not forgery as there is no risk of loss or injury to any person and the element of fraud as defined in Section 25 is absent. Support any claim or title: The term "claim" is not restricted to claim to property.

It may be a claim to anything, as for instance, a claim to a woman as the claimant's wife, a claim to the custody of a child as the claimant's child, a claim to be admitted to a law class in a college or an university or other examination or a claim to continue in service or to the possession of any kind of property. To cause any person to part with property: A forgery to cause any person to part with property must be made "dishonestly" as distinct from "fraudulently". The term "property" has not been defined. The property, sought through a forged document may be property actually in existence or likely to come into existence in future. For example if A gave an order to B to buy the materials for making, and to make a silver tea service

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for him and C before the tea service was made, or the materials for making it had been bought, were to make a false letter purporting but falsely, to be signed by A, authorising B to deliver to D the tea service when made, C would be guilty of forgery by making a false document with intent to cause B to part with property, namely, the tea service when made. With intent to commit fraud or that fraud may be committed: Section 463 which defines forgery says it amounts to forgery if a person makes a false document “ with intent to commit fraud or that fraud may be committed”, while Section 464 which defines a false document says that for a document to amount to a false document, it is necessary that it must be made “ dishonestly or fraudulently”.

A pertinent question arose in a Full Bench case of the Madras High Court, whether there is any difference between doing a thing “ fraudulently” or doing it with “ intent to defraud”. The Judges composing the Bench expressed themselves differently. According to Sir Arnold White C. J.

, the two expressions mean the same thing so that a false document made as defined in Section 464 completes the offence even if the other elements of intent referred to in Section 463 are wanting. According to Benson, J. “ the act amounted to fraud when the accused intended to get a benefit to himself by means of the deceit and of the injury which must result to the party upon whom the deceit is practised and thereby to the public’. According to Subramania Aiyer, J., the mere fact that an advantage has been secured by the accused is not enough; it must involve loss or risk to an individual or to the public. The fact of the case were that a private candidate, who was required to produce certificate, as to his good character and as to his having

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completed twenty years of his age, from the Headmaster of a recognised school, with his application for admission to the matriculation examination made a false certificate, forging therein his Headmaster's signature.

According to Davies, J.

, mere intention to deceive does not show an intention to defraud or to cause wrongful gain or wrongful loss. The object of the accused was to appear for the examination—not a thing of value if he failed; if he passed he would get a diploma not on account of the false document he made but on the strength of his own merits. The offence does not require that fraud should, in fact, be committed. All that is necessary is that it should have been intended. It is not necessary that in a fraudulent intent, there should be present both an intention to secure a benefit or advantage to one self and to cause loss or detriment to the other, for the presence of the one without the other is sufficient. The presence of advantage or benefit to one may also sometimes involve the presence of injury or loss to another but this is rather an aggravated case of fraud and by no means the usual one. As Sir James Stephen has remarked, the principal object of a fraudulent person is in nearly every case, his own advantage.

Such advantage need not be connected with pecuniary gain. The majority opinion in the above Full Bench, Madras case seems to be that an intention to secure a benefit or advantage to the party deceiving by means of the deceit constitutes an intention to defraud. Where there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud and if a document is fabricated with such intent, it is a forgery. Forgery is committed not only when the forger himself intends to commit fraud but also

when he intends to cause it to be committed, that is, when does an act to facilitate its commission by another; in other words, he would be equally guilty in abetting the commission of the offence as in committing the offence itself. Abetment in this particular instance has been considered far too serious to be treated differently than the principal offence which has accordingly been so comprehensively defined as to include abetment also within its ambit. From reading Sections 463 and 464 together, it is clear that there can be no forgery without a “dishonest” or “fraudulent” intention behind it, whatever other intention as contemplated in Section 463 may also be there along with it. The meanings of a ‘dishonest’ and of a ‘fraudulent’ intent and the distinction between the two meanings have been explained by the Supreme Court in two leading cases discussed below.

In *Dr. Vimla v. Delhi Administration*} a case of forgery for cheating, the accused purchased a motor car with her own money in the name of her minor daughter, Nalini and had the insurance policy transferred in the name of her said daughter by signing Nalini’s name. She also received compensation for the claims made by her in regard to the two accidents to the car. The claims were true claims and she received the moneys by signing in the claim forms and also in the receipts as Nalini. The accused in fact and in substance put through her transactions in connection with the said motor car in the name of her minor daughter. Nalini was in fact either a benamidar for the accused or her name was used for luck or either sentimental considerations.

On the facts found, neither the accused got advantage either pecuniary or otherwise by signing the name of Nalini in any of the said documents nor the

insurance company incurred any loss, pecuniary or otherwise, by dealing with the accused in the name of Nalini. The insurance company would not have acted differently even if the car had stood in the name of the accused and she had made the claims and received the amounts from the Insurance Company in her name. On these facts that arose before the Supreme Court, was whether the accused was guilty of the offences under Sections 463 and 464, I. P.

C. It was held that the accused was certainly guilty of deceit for though her name was Vimla she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini but the said deceit did not either secure to her advantage or cause any non-economic loss or injury to the insurance company. Neither the Company incurred any loss nor the accused was benefitted. In the result the accused was not guilty of the offence. The Supreme Court has held in this case that the expression “defraud” involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived.

Even in those rare cases, where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived the second condition is satisfied. A false document may be made “dishonestly” or “fraudulently” while dishonestly contemplates wrongful gain or wrongful loss of property

that is, economic gain or loss, “ fraudulently” to convey a different meaning means non-economic or non-pecuniary gain or loss. This distinction was emphasised in a case by the Supreme Court, in which the facts were that the accused who was the sole heir of his deceased father attested the signatures of his deceased father on the reverse of the application form for the transfer of the Post Office National Savings Certificates in the name of his father, so fresh certificates issued in the name of his father, signed the name of his deceased father on the back of the three certificates in token of their cancellation, placed his own attestation and stamp of his office thereon, gave a letter of authority in favour of a daftri attached to his office as though it was given by his deceased father and received the money from the post office which he would otherwise also have got without making false documents through the procedure prescribed for obtaining a succession certificate.

His intention at the time when he made out the false documents was to short-circuit the alternative procedure open to him and receive the money without going through the expense and trouble involved therein. It was held that the whole matter could be looked at from two different angles, from one angle that he had made the false documents with the intention to cause wrongful gain to himself by avoiding the expense involved in obtaining a succession certificate and thus he made false documents dishonestly. If it is taken into consideration that he would have received the amount as the sole heir entitled to it after satisfying the Post Master-General and the rationing authority, by his short-circuit desire he relieved himself of the trouble of satisfying these authorities that he was the sole heir and avoided the risk of



their refusal and delay he secured an uneconomic advantage if thus acted fraudulently. We may before posting with the subject briefly discuss the provisions of Section 464. This section defines "making a false document".

A document can be said to be falsely made if the signature, seal or the date is false. It covers also cases where a document is signed by the accused but is so signed dishonestly or fraudulently with the intention of causing it to be believed that the document or any part of it was made, signed, sealed or executed under the authority of a person by whose authority the maker knows that it was not made, signed, sealed or executed. A false document is made not only when the whole of it is made but even where a person makes only a part of it. For the application of this section it is necessary that the false document must be made dishonestly or fraudulently. In order to constitute the offence, it is not necessary that the wrongful gain or loss should be actually caused. It is sufficient that there should be the intention of causing it. Clause II of the section requires dishonest or fraudulent cancellation or alteration of document in any material part without lawful authority after it has been made or executed by a person who may be living or dead.

An alteration to be material must be one which alters or attempts to alter the character of the instrument itself which affects or may affect the context which the instrument contains or of which it furnishes the evidence. An alteration which does not purport to effect the terms of the context or its identity or its validity is not an alteration in a material part thereof. Clause III says that where the person making a document does not know its contents owing to unsoundness of mind or intoxication or deception, the person who

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dishonestly or fraudulently causes such person to sign, seal, execute or alter the document makes a false document. According to Explanation 1 there may be a sufficient falsity in a man's merely signing his own name, if he does this in order that it may be mistaken for the signature of another person of the same name. Illustration appended to Explanation makes it clear. Explanation 2 makes it clear that making of a document will be forgery if it is a false document even in the name of a fictitious person. This is illustrated by illustration appended to the section. A leading decision is that of *Peru Raju*.

The accused advertised for sale of a fictitious work on English idioms by one Robert S. Wilson M. A. stating that the intending purchasers should send by money order the price of Rs. 2. 4 to " Robert S.

Wilson, Council House Street, Calcutta". Then he requested to postal authorities at Calcutta in the name of fictitious Wilson, to pay the money orders to his clerk Seshagiri Rao and finally received the amounts by giving false receipt in the name of Rao. The accused was held guilty of cheating and forgery. The accused signed certain documents with the intention of causing it to be believed that these documents were signed by the Secretary of the Kerala Sarvodaya Samithi, knowing very well that such a Samithi did not exist and that he was not the Honorary Secretary thereof and that he had no authority to sign it and by signing these documents he made a wrongful gain to himself.

He was held guilty of this offence.