

This reputation or  
property. according to  
the explanation,



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This section requires that the offender must deceive any person. He must have fraudulent or dishonest intention. By so deceiving and with such an intention he must induce the person so deceived either to deliver any property to any person or to give consent that any person shall retain any property. Or, he must intentionally induce the person so deceived either to do anything or omit to do anything.

This doing or omitting he would not do or omit if he were not so deceived. This act or omission either must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. According to the explanation, if a fact is dishonestly concealed by an accused, it is a deception within the meaning of this section, that is to say, it falls under the expression 'by deceiving any person' under this section. The words 'fraudulently' and 'dishonestly' have been defined in sections 25 and 24 of the Code respectively, and bear the same meaning as stated therein. It is clear from a careful reading of the section that the initial words 'whoever, by deceiving any person,' are applicable to the whole section.

The words 'fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property' constitute the first part of the section. It is clear that fraudulent or dishonest intention is needed to be proved against an accused who is to be convicted on the basis of this part of the section. The words 'or, intentionally induces the person so deceived 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' constitute the second part of the definition.

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Fraudulent or dishonest intention is not necessary under this part, but there must be intentional inducement on the part of the offender. It is clear from this part that the words ' damage or harm to that person in body, mind, reputation or property' are relevant only for this part of the section and not for the earlier first part to explain the nature of this offence. As stated above the initial part of the section, that is to say, the words ' whoever, by deceiving any person,' are to be read with each of the two abovementioned parts of this section. The nine illustrations given in the section try to illustrate what has been said in the main text of the section. However, the illustrations throw no light on what is meant by damage or harm in body, mind and reputation and so far as such damage is concerned the offence is not very appropriately placed in the chapter of the Code relating to offence against property.' The Calcutta High Court has held that a bank being a juridical person, it cannot have the requisite guilty mind to commit the offence of cheating.

Where a fraudulent misrepresentation is made by an agent of the accused on his behalf it is a misrepresentation made by the accused himself in the eye of law. The section nowhere states that the representation must be made by words, and thus where an accused wearing a khaki shirt threatened to take the complainant to a thana, it was held that he had practised deception by giving an impression that he was a police officer having authority to take the complainant to the thana. Where a person knows that the statement made by the accused is false, but with a view to entrap him still acts upon it, it is an attempted cheating on the part of the accused.

Thus, where the accused posed that he could double the currency notes and

a police officer who knew that this was not possible still gave him currency notes so that he could catch the accused red handed, which he did, while the accused tried to substitute some pages of a book, it was held that the accused was guilty of attempt to cheat. In *Motorola Incorporated v. Union of India* the Bombay High Court has held that prosecution for cheating against a company cannot be sustained.

The company being a juridical person is in a sense *doli incapax* and cannot have criminal intent to deceive others. The same is true in respect of the offence of criminal conspiracy. Therefore, although a person who is the victim of deception can be a company, the perpetrator of deception cannot be a corporate body like a company or association. It can only be a natural person who is capable of having *mens rea* to commit the offence.

Consequently, the word 'whoever' in section 415 and section 120-B cannot include within its sweep juridical person like a company. Where the accused, a railway employee, obtained a free pass to travel by train for his wife and mother but handed over the same to another woman who used it, he was held guilty of cheating.

Secretly entering an exhibition building without buying a valid ticket does not amount to cheating because no false representation has been made to anyone. Where, as a result of conspiracy between the accused persons to cheat the officers of a life insurance company, a doctor is intentionally induced to certify a dying man as in good health, that act if known is likely to cause harm to the doctor's moral and professional reputation, and is thus punishable as cheating. Where there is no misrepresentation or suppression

of any material fact on the part of the accused promoters of a money  
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circulation scheme with a view to cheat or defraud the public, there can be no guilt for cheating even if the scheme is unworkable or speculative. Where the accused knowingly makes a false representation to the victim that a property is free from all encumbrances, and thereby dishonestly induces him to buy it and part with money, he is guilty of cheating. Where a prostitute misrepresented deliberately to a man that she was free from any disease and thus had sexual intercourse with him resulting in communicating syphilis to him, she was held guilty of cheating. Where the accused induced a station master to issue him a receipt of a consignment of two hundred and fifty-one bags of chillies whereas the wagons contained only one hundred and ninety-seven bags of chaff, there could be no cheating on the part of the accused as the railways did not incur any additional liability by the false representation nor was there any damage or harm caused to it.

Similarly, where in some cases the prescribed procedure was not followed for making purchases and in some cases even higher prices were paid than those quoted by some firms, this by itself did not amount to cheating.

Refusing to take delivery because of fall in market price could not amount to cheating though it would incur civil liability for breach of contract. Passing of girls of low caste as those of higher caste and thus obtaining money from those men who married them was held to be cheating. Where the complainant supplied some material for which he was paid by cheque which was dishonoured twice, this by itself would not amount to cheating especially because the complainant did not disclose the dates on which the order was placed and the goods supplied.

Where a cheque issued for price of returned articles in a business transaction is dishonoured and there is nothing to show any dishonest or fraudulent intention on the part of the accused, ingredients of cheating cannot be said to be established and this offence will attract the provisions of section 138 of the Negotiable Instruments Act, 1881. Where the appellant alleged in his complaint that the respondents had borrowed money from him to start a transport business of which the appellant would be the proprietor and the respondents his agents, but the respondents started business in their own name and refused to return the appellant's money and render accounts, this would not be enough to convict them for cheating. Where the accused who was serving as a temporary civil assistant surgeon in the Madras Medical Service applied for a permanent appointment to the Madras Public Service Commission and made false representation as to his name, father's name, place of birth and that he held the basic degree which was the eligibility for the post, and was interviewed by the Commission and selected, posted and drew salary for many years after which the fraud was detected, it was held that he had committed the offence of cheating because even though the Commission was an independent statutory body doing advisory function, the deception of such adviser was deception of the Government which was expected to act on its advice, and, thus by deceiving the government he had intentionally induced it to deliver property to him, which in this case was his salary which felt due. Where the accused used duplicate certificate with changes as a true certificate knowing it to be false in material particular and thereby got admission in a polytechnic, his conviction under sections 198, 420 and 471 of the Code was held to be good.

His sentence was, however, reduced to that already undergone. Where the respondent gave publicity by his own self, his agents, news media owned by the state government and the public press that the Indira Gandhi Pratibha Pratihthan was a government trust, which it was not, and Mrs. Indira Gandhi, the then Prime Minister never agreed for the trust to be named after her and it was so made clear in Parliament also, and the respondent thus made deliberate misrepresentation with a view to get maximum money contributed by the public to the trust, it was held that the evidence justified framing of a charge of cheating and this presumption was rebuttable. The Calcutta High Court has held that for cheating dishonest intention on the part of the accused from the beginning is necessary to be proved. Thus, where the accused did intend to pay against delivery of goods and had no intention to cheat at the initial stage, he could not be held guilty of cheating.

But where there was no intention to pay but the promise for payment was made so as to make the complainant part with goods, the accused would be convicted of cheating. Unless the accused has an obligation under law to disclose the facts concealed, a concealment of facts cannot be held to be dishonest. There is thus no obligation on a seller to disclose apparent defects to a buyer which could be easily discovered.

The existence of a prior mortgage or the claims of a coparcener of a Hindu joint family could easily be discovered and so such a concealment cannot amount to cheating. Where a drawer gives a cheque in lieu of money due, the dishonouring of it by itself is not cheating, and the law remains the same even if the drawer knows that there are no funds in his account because it must also be established that the drawee either parted with property or that <https://assignbuster.com/this-reputation-or-property-according-to-the-explanation/>

he did something which he would not have done had he known that the cheque would be dishonoured. Even though drawing of a cheque proves that the drawer has an account with the bank in question, that he has authority to draw on it, and that the cheque drawn is a valid order for the payment, it does not prove that the drawer has in his account at least that much amount for which he has drawn the cheque because he may either have an authority given by the bank to overdraw or may have an honest intention to credit the necessary amount in his account before the cheque is presented for disbursement. Civil liability does exist, however, for the non-payment. The Negotiable Instruments Act was amended in 1988 in this respect and criminal liability has now been provided under certain conditions when a cheque is dishonoured. Failure to pay insurance money made on a police claim by itself does not entail liability for cheating.

Switching off the air conditioner in an air-conditioned cinema hall may be held to be cheating. Where payment of a post dated cheque was stopped by the drawer, it could amount to cheating if essential ingredients of the offence are present. But where a post-dated cheque is dishonoured but the intention of the drawer at the outset to have the same dishonoured is not established, no conviction for cheating could be maintained. A passport being a property, obtaining several passports by making false representations is punishable as cheating and also as criminal conspiracy to cheat. In *Shashi Pratap Singh v. State of Uttar Pradesh*, the accused entered into an agreement with the complainant to sell a plot to him. The opposite party himself resiled from the contract and did not pay the balance amount due to which the sale deed could not be executed and he wrongly filed a complaint against the applicant



with mala fide intention. The Allahabad High Court observed that there was nothing in the complaint to show that the intention of the applicant from the very beginning was fraudulent or dishonest.

In case the applicant failed to perform the part of his contract the remedy was to file a civil suit for specific performance; a criminal complaint was not maintainable. False representation as to caste In G. V. Rao v. L. H.

V. Prasad, the accused respondent palmed off his sister as a woman of much higher caste than she really was and the petitioner married her on the faith that he was marrying a woman of his own caste and status. The petitioner was said to have been fraudulently induced by deception to do a thing, i. e., marrying a woman of a caste prohibited which, but for the deception practised upon him by the accused respondent, he would have omitted to do. The Supreme Court held that this offence fell under the second part of section 415 and quashing of the F.

I. R. by the High Court on the ground that section 415 necessarily relates to property, is incorrect. Sex relations under promise of marriage Where the accused developed sexual intimacy with a girl by promising her and her parents that he would marry her, but married another girl later on, it was held that this was not cheating as fraudulent intention at the time of first starting such intimacy must be proved which was absent in this case. In Mailsami v.

State of Tamil Nadu the accused by making a promise of marriage to the victim girl induced her to have sexual intercourse with him. Once she

became pregnant he started evading the issue of marriage and putting  
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impossible condition to terminate the six month pregnancy. The Madras High Court held that the offence of cheating was made out.

In *Maran Chandra Paul v. State* the accused induced the prosecutrix to have sexual intercourse with him by promising to marry her. The evidence indicated that there was a possibility that she was sixteen years of age at the time of cohabitation taking place with consent of the prosecutrix. It was held that there was no offence of rape committed, but in view of the promise of marriage given by the accused he would be liable to be convicted of cheating. In *Subhransu Sekhar Samantray v. State of Orissa*, the accused had sexual intercourse with the prosecutrix after applying vermilion on the parting of her hair and acknowledging her as his wife and promising that he would do so publicly once he got a job even though in the beginning she had resisted sex relations. The accused was held guilty under section 493. The Orissa High Court further held that the prosecutrix was cheated because of deception made by him with dishonest intention to sexually exploit her.

Thus, prima facie a case existed against him and framing of a charge under section 417 also was proper. In *Badi Chinna Rao v. State of Andhra Pradesh*, the accused had sexual intercourse with the prosecutrix on several occasions on false promise of marriage and by making persistent representations that he could not live without her company.

The prosecutrix became pregnant and the accused made attempts to abort the foetus. The Andhra Pradesh High Court held that this showed that he never intended to marry her and by deceitful means made her succumb to his desire, and thus he was liable to be convicted under section 417 of the

Code. In *Bipul Medhi v. State of Assam*, the accused induced the victim woman to have sexual intercourse with him on false promise to marry her. The Gauhati High Court held him guilty under section 417 of the Code.

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The authors of the Code said that if all the misrepresentations and exaggerations in which men indulge for the purpose of gaining at the expense of others were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalties of the law. It happens hourly that an article which is worth ten rupees is affirmed by the seller to be cheap at twelve rupees, and by the buyer to be dear at eight rupees. The seller comes down to eleven rupees, and declares that to be his last word; the buyer rises to nine, and says that he will go no higher; the seller falsely pretends that the article is unusually good of its kind, the buyer that it is unusually bad of its kind; the seller that the price is likely soon to rise; the buyer that it is likely soon to fall. Here we have deceptions practised for the sake of gain, yet no judicious legislator would punish these deceptions. In view of the above, the offence of cheating would be held to be committed only when the thing sold is of an entirely different description from what was represented by the seller to the buyer, and the statements on the part of the buyer are not in the form of praise for the goods or are not expressions of opinion. Explanation The explanation attached to this section says that a dishonest concealment of facts is a deception. It thus refers to actual deception itself and not to concealment of deception by someone else. Where the parents of a girl while negotiating for her marriage concealed the fact that she was pregnant and got her married to the

complainant, and the girl delivered a child five months after her marriage, it was held that this could not be a case of deception by dishonest concealment of a fact.

Can this case not fall under the latter part of the section and thus amount to cheating, is a debatable question. Sending less or no money under registered insured post Where a debtor allegedly sends government currency-notes due to the creditor per registered cover but the creditor either finds less money or no money at all in it, can the debtor be held guilty of committing cheating if it is proved beyond doubt that it was a fact that he sent less or no money? The opinions of the courts seem to be divided. The Chief Court of Oudh and the High Courts of Patna and Allahabad have held that this amounted to cheating on the ground that by sending the insured cover he would obtain the signature of the creditor on the acknowledgement slip and such act would not have been done by the creditor if he would not have been deceived by the debtor, and this caused or was likely to cause damage or harm to the creditor in his body, mind, reputation or property. On the other hand, the Chief Court of Punjab and the Calcutta High Court have held this to be only attempted cheating on the ground that the creditor has been misrepresented to sign on the acknowledgement slip thus proving that he did receive the insured cover, but his signature would not mean that he actually received the required amount in that insured cover because the acknowledgement slip is only a proof of receipt of the cover but not of the cover containing the money. The third view is of the Bombay High Court which held that the debtor would be liable under sections 420, 511 and 193

of the Code. Another view is that of the Allahabad High Court in Tula Ram v. Emp.

Where it was held that the debtor was guilty of attempting to commit the offence of fabricating false evidence in such a case because by obtaining the creditor's signature on the acknowledgement slip he would try to create an erroneous opinion in the mind of a court that he had paid up the dues whereas the fact was otherwise. Out of all the views discussed above, the view in the Tula Ram's case seems to be most logical, and thus reasonable.

Amount received for bribing Where the accused induced the complainant to pay to him a sum of money to bribe the session's judge to get acquitted certain persons, the offence is complete when the complainant paid the amount though the money belonged to such persons.