

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

CRA 708 Of 2015

Adhishekhar Biswas

-Versus-

The State of West Bengal

For the Appellant : **Mr. Saswata Gopal Mukherjee, Sr. Adv.
Mr. Kallol Kumar Basu,
Mr. Jamat Ul Firdous.**

For the State : **Ms. Sreyashee Biswas**

Hearing concluded on : **13.06.2025**

Delivered on : **16.06.2025**

Prasenjit Biswas, J:-

1. The impugned judgment and order of conviction dated 22.09.2015 passed by the learned Additional Sessions Judge, 5th Court, Barasat, North 24 Parganas passed in connection with Sessions Case No. 22(12) of 2012, Sessions Trial No. 2(2) of 2014 is assailed in this appeal.

2. By the impugned judgment and order this appellant is found guilty for commission of offence punishable under Section 420 of the Indian Penal Code and sentenced him to suffer a simple imprisonment for 3 years and to pay a fine of Rs. 1,00,000/- (Rupees one lakh) and in default of payment to suffer further simple imprisonment for another one year.

3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction passed by the learned Trial Court the present appeal is preferred at the behest of the appellant.

4. In short campus the case of the prosecution is delineated hereunder:-

“The victim lodged a complaint before the Barasat police station stating that he had love affairs with this accused since 1997. The accused Adhisekhar Biswas had sexual intercourse with the victim promising to marry her and as a result she became pregnant but the accused Adhisekhar compelled her to undergo an abortion of her pregnancy. Thereafter the accused again had sexual intercourse with the victim and took money from her and her family members on several occasions but subsequently, he did not marry to this victim. The victim came to know that the accused Adhisekhar is married having his wife at Bangladesh.”

5. On the basis of the complaint made by the victim the case was started by the concerned police station being Barasat P.S. Case No.499 dt.09.03.2010 u/s 417/376/313/509 of I.P.C. After completion of investigation charge sheet was submitted by the prosecuting agency for committing offence punishable u/s 376/417/313/509 of I.P.C. against this accused person along with other accused

person who was acquitted by the impugned order passed by the learned Trial Court.

6. The charge was framed by the Trial Court against this appellant under Sections 417/420/313 of the Indian Penal Code. The charge was framed by the Trial Court under Section 509 of the Indian Penal Code against the accused Bhudeb Biswas u/s 509 of I.P.C. who was also acquitted from this case.

7. In this case nine witnesses were examined by the side of the prosecution. Documents were marked as exhibits on behalf of the prosecution. Neither any oral nor any documentary evidences were adduced on behalf of the defence.

8. Mr. Saswata Gopal Mukherjee, learned Advocate appearing on behalf of the appellant submitted before this Court inter alia that the learned Trial Court had miserably failed to appreciate the evidences brought on record by the side of the prosecution. It is said that the present appellant was acquitted from all the charges framed by the Trial Court but he was found guilty for commission of offence punishable under Section 420 of the Indian Penal Code and was sentenced for commission of that offence under that section. Mr. Mukherjee further assailed that there are no ingredients of offence under Section 420 of the IPC in this case for which this appellant may be convicted. Only on the lone statement made by the victim that Adhisekhar Biswas (accused) took money from her and from her family members he was convicted. There is no corroborative evidence to that statement of this witness. No document was seized by the investigating officer regarding any transaction between this appellant and the victim. Moreover, Section 420 of IPC relates to property but in this case nothing has been stated by the witnesses that this appellant cheated the victim or induced her dishonestly to

deliver any property or anything which is signed or sealed, and which is capable of being converted into a valuable security. So, it is said that the investigation was doubtful and on the basis of such investigation and the evidences brought on record by the prosecution this appellant ought not to have been convicted. The attention of this Court is drawn by the learned Advocate regarding statement of PW 5 wherein she admitted that this appellant married her and they were residing in a rented house at Sasida, at Roy villa, Subashpally, Mdhyamgram. It is further contended by the learned Advocate that if the entire impugned judgement is scanned meticulously, it would be evident that the prosecution case against this appellant could not be proved beyond all reasonable doubt. So, it is said that the judgment and order of conviction passed by the learned Trial Court may be set aside.

9. Per contra, Ms. Sreyashee Biswas learned Advocate for the State as her usual fairness said that it is true that ingredients of offence under section 420 of the Indian Penal Code is apparently absent in this case and no document in respect of any property regarding any transaction between the victim and the appellant was seized by the concerned I.O. and nothing has been stated to that effect by any of the witnesses. So, it is prayed that appropriate order may be passed in this case.

10. I have considered the rival submissions advanced by both the parties as well as have gone through all the materials gathered in the record.

11. Section 420 of the IPC lays down the punishment for aggravated forms of cheating where the offender dishonestly induces a person so deceived to deliver any property or interfere with any valuable security. It is essential to prove that

parting of the property is by virtue of dishonest inducement of the accused and delivered property must be of some monetary value to the person who has been cheated. So, in simple terms, if an individual deceives someone to obtain property or manipulate important documents they can face imprisonment for up to seven years in addition to a fine

12. PW1 Ratan Roy is the land lord under whom the victim was a tenant. This witness is declared hostile by the prosecution and cross examined him but no evidence regarding commission of offence under Section 420 is elicited from his statement.

13. PW2 Mamata Chakraborty, PW3 Doly Mallick and PW4 Pradip Das (who filled up the formal portion of FIR) stated nothing in this case for which the prosecution may get support.

14. PW5 is the victim and star witness of the prosecution stated at the time of giving evidence that this appellant took money from her and from her family members. Save and except this statement she stated nothing regarding commission of offence by the accused under Section 420 of IPC. This witness admitted that this appellant married her and they were residing in a rented house. This PW 5 has stated nothing regarding any transaction between her and the appellant. The statement of this witness regarding taking money by this appellant from her and her family members are not corroborated by any of the prosecution witnesses.

15. PW6 Anjana Chakraborty who is the next door neighbor also stated nothing against this accused regarding any transaction in respect of property between this appellant and the victim.

16. PW8 Ramananda Das Adhikari, S.I. of police who took up the investigation at first but in his statement he stated nothing about seizure of any document regarding transaction in respect of property between the appellant and the victim. In fact no document was seized by this I.O. regarding the statement made by the victim that this appellant took money from her and her family members.

17. PW9 Danesh Ali Dafadar, second I.O. of this case who after completion of investigation submitted charge sheet against the accused persons.

18. The Trial Court convicted this appellant for committing offence under Section 420 IPC. The allegation of this victim/defacto complainant is that this appellant has cheated her and took money from her and her family members. Under Section 420 of IPC the prosecution has to prove that this appellant cheated the victim and thereby dishonestly induced her to deliver any property or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed and which is capable of being converted into a valuable security. So, while prosecuting a person for the offence of cheating punishable under Section 420 of the Indian Penal Code it is to be seen whether the deceitful act or cheating is coupled with an inducement leading to the parting of any property by the complainant. To constitute an offence of cheating, merely committing a deceitful act is not sufficient unless the deceitful act dishonestly induced a person to deliver any property or any part of a valuable security, thereby resulting in loss or damage to the person. If an individual deceives someone to obtain property or manipulate important document they can face imprisonment for the offence punishable under Section 420 of IPC. In this case nothing has come out that this appellant deceived the victim to obtain property or manipulate important documents. It is only said by the victim that this appellant took money from her and

her family members and other prosecution witnesses did not corroborate her statement. Moreover, no document relating to any transaction was seized by the investigating officer during course of investigation.

19. At the time of examination of this appellant convict under Section 313 of CrPC it is said that he knew the victim since the year 2006 when he used to work an accountant in his house at Noapara, Barasat and he made an arrangement for a loan in the name of victim of Rs.3.5 lakh from the bank and he himself and his brother were the guarantor against the said loan. At the time of examination this appellant further said that he married the victim in the year 2010 but the victim asked him to reside in her father's house as 'ghar jamai' and as he refused to do so for which victim falsely filed this case against him and his brother. So, it would appear from the statement made by the accused for which reason the victim impleaded this accused in this case. This examination under section 313 Cr.P.C enabled the accused personally to explain the circumstances appearing in the evidence made by PW5 against him. I have already said that in order to prove the case of the prosecution for the offence of cheating punishable under section 420 IPC, it has to be proved that the accused had fraudulently or dishonestly induced the complainant and by such inducement the complainant was deceived and she delivered some property to the accused.

20. Recently the Supreme Court in case of **Mariam Fasihuddin & Anr. versus State by Aduodi Police Station & Anr.** reported in **2024 Live Law (SC) 53** held that while prosecuting a person for the offence of cheating punishable under Section 420 of the Indian Penal Code, it is to be seen whether the deceitful act of cheating was coupled with an inducement leading to the parting of any property

by the complainant. The court discussed the contours of the offence of 'cheating'. In the said report it is noted that in order to attract the provision of Sec. 420 IPC, the prosecution has to not only prove the act of cheating but it needs to be also proved that the act of cheating resulted into an inducement to deliver the property resulting in to a loss or destruction of property to the person who have been induced to deliver such property.

21. In **Mariam Fasihuddin (supra)** the Hon'ble Apex Court held interalia that-

“It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement.”

22. In the above report the Hon'ble Apex Court observed that in order to invoke Section 420 of the Indian Penal Code, the prosecution must not only prove the act of cheating but has to also prove cheating induced the person to surrender the property in question.

23. In view of above facts and circumstances and discussion made above I am of the opinion that the learned Trial Court committed error and illegality in passing the impugned judgment and order of conviction against this

appellant. Accordingly, the impugned judgment and order of conviction dated 22.09.2015 is liable to be set aside.

- 24.** The impugned judgment and order of conviction passed by the learned Trial Court dated 22.09.2015 in connection with Sessions Case No. 22(12) of 2012, Sessions Trial No. 2(2) of 2014 is hereby by set aside.
- 25.** The appellant is on bail. He is to be discharged from the bail bonds and be set at liberty if he is not wanted in connection with any other case.
- 26.** Accordingly, the criminal appeal being no. CRA 708 of 2015 is hereby **allowed.**
- 27.** Let a copy of this order along with TCR be sent down to the learned Trial Court immediately.
- 28.** Urgent Photostat Certified Copy of this order, if applied for be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)