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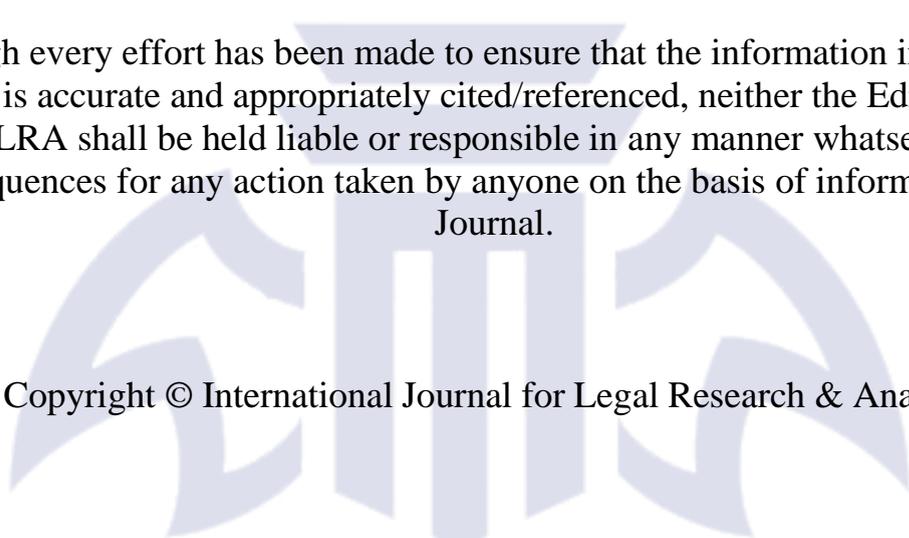
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Case Analysis

N. Raghavender v. State of Andhra Pradesh

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Introduction

'A' was the Branch Manager for the bank called 'X.' He worked along with 'B,' his subordinate, working as a clerk-cum-cashier. 'C' was A's close relative and opened a Current Account in the said Bank as Academy' Y's' treasurer. The account number was '282', with an initial deposit of ₹5 Lakh. Let's further assume that 'D' was a long-term client of the bank, holding two Fixed deposits, to the tune of ₹10 Lakh and ₹4 Lakh each.

A, by virtue of his authority within the bank, issued three loose-leaf cheques in favor of C, totaling to ₹10 Lakh, caring less about the insufficiency of funds in C's account. For as amusing as this sounds, he also did not enter the transactions in the official record.

Further, A also withdrew the sum of 14 Lakhs from D's FDRs and furthered them to C's account. However, he continued to pay interest to D (*allegedly*) to cover the withdrawal of his money.

One day D called the bank to collect the interest accrued on the total sum of ₹14 Lakhs, and the 'fraudulent' transactions came to light to the Bank authorities. A was fired, and an internal audit commenced to uncover the irregularities.

On first reading the case, it seems like A has defrauded and cheated the bank and must be penalized for it. However, in the case of *N. Raghavender v. State of Andhra Pradesh, CBI*, A, that is, *N. Raghavender* was subsequently acquitted.

This paper aims to analyze the question of law presented in front of the Courts in the said case and attempts to answer the question left by the Court for *Academic Discussion*.

N Raghavender v. State of Andhra Pradesh, CBI¹

Facts

1. Appellant N Raghavender was the Branch-Manager in the Sri Rama Grameena Bank (herein referred to as the 'Bank') at the Nizamabad Branch. Accused 2 was A. Sandhya Rani, who worked as a clerk-cum-cashier in the bank; and Accused 3, C. Vinay Kumar, the brother-in-law of the Appellant, worked as the treasurer of the Nishita Educational Academy (herein referred to as the 'Academy').
2. Accused 3 opened a Current Account number 282 in the bank as an official of the Academy. The initial deposit in the Bank was Rupees Five Lakhs. As alleged by the Prosecution, the Appellant colluded with the co-accused in allowing withdrawals of up to 10 Lakhs, even though the account had insufficient funds.

¹ *N. Raghavender v. State of Andhra Pradesh, CBI, Writ Petition No.10509 Of 2019*

3. The first such withdrawal was made on 23rd March 1994 for an amount of ₹2,50,000, followed by the debit of a sum of ₹4 Lakh on 30th June 1994. The last amount withdrawn was for ₹3,50,000 on 30th September 1994. All three cheques were given as loose-leaf cheques.
4. The Prosecution also alleged that the Appellant pre-maturely closed two Fixed Deposit Receipts (Hereinafter referred to as the FDRs), in the name of B. Satyajit Reddy, without his consent or knowledge. The sum of ₹14 Lakhs withdrawn therein was transferred to account 282; however, the books only showed a credit of ₹ 4 lakhs.
5. The matter came to light when B. Satyajit Reddy called the bank to withdraw the interest accrued, even though his FDR was broken in February 1995. It was also observed that interest was being credited to Reddy's savings account, either via cash or through the joint saving account of the Appellant and his wife, N. Lalitha.
6. The Appellant was subsequently released from his duties as the Branch Manager, and an audit inquiry was held to uncover the irregularities. This led to the Chairman of the Bank filing charges against the Appellant, to the Superintendent of Police, CBI.
7. The CBI booked the Appellant under Sections 409, 477(A), and 120B² of the Indian Penal Code, and Section 13(2) read with Section 13(1)(c) &(d) of the Prevention of Corruption Act, 1988.
8. The Trial Court found the Appellant guilty and charged him with five years of imprisonment, coupled with various fines. The Appellant then appealed at the High Court of Judicature, Andhra Pradesh, where his appeal was dismissed and conviction upheld. The Appellant then challenged the Trial Court and the High Court decision before the Supreme Court of India.

Arguments Forwarded By The Appellant

1. On behalf of the Appellant, the senior Counsel contended that the best *neutral* evidence was withheld from the Court due to the non-examination of B. Satyajit Reddy. He also held that in the absence of such an examination, there was nothing to discredit the two letters written by Reddy, authorizing the Appellant to close the FDR and urging him to transfer the fund into Account 282.
2. He also drew attention to the ratio of the cases *Prabhat v. State of Maharashtra*³ and *Mahak Chand v. State of UP*⁴.

² Indian Penal Code, 1860, §120B- Punishment for Criminal Conspiracy

³ In this case, the appellant was charged under Section 302, and several other provisions, along with six other accused, who were acquitted. The case pertained to the murder of an 'X' at the doorstep of Y's house. The case was first tried at the Trial Court, wherein the Court acquitted the Appellant for the want of evidence, in light of contradictory claims made by the Eye-witnesses presented by the Prosecution. This decision was overturned at the High Court, and the Appellant then challenged the order under the Supreme Court. The Apex Court held that the discrepancies in the claims of the eye-witness were not something minor, and had to be taken into account. When viewed with the non-Examination of a material witness (Y), turned to be fatal to the prosecution's case. Thus, the Court gave the Appellant the benefit of the doubt and reversed the High Court order.

Prabhat Bhai Narayan Wagh & Ors v. State Of Maharashtra, Criminal Appeal No. 72 of 2008, ¶10

3. The learned senior Counsel also urged that since the bank incurred no loss and no complaint was filed by B. Satyajit Reddy, no offense was marked out against the Appellant. He relied on the verdict of the Court in *Hari Sao v. State of Bihar*⁵ and *Mohd. Ibrahim v. State of Bihar*.⁶
4. The Counsel for the Appellant further claimed that the Prosecution's argument about the deposit of interest in Reddy's account from the Joint Account of the Appellant and his wife was being raised for the first time. There was no charge filed against him in its relation, and he was not given a chance to explain the incriminating matter while giving his statement pursuant to Section 313 of the CrPC.⁷ And thus, these allegations must be excluded from consideration, following the Court's decision in *Samsul Haque v State of Assam*.⁸
5. The Counsel also contended that there was a complete absence of *Mens Rea* on the part of the Appellant since he drew no benefit from the transaction. The Courts also accepted that the withdrawals were made to the advantage of Accused 3.
6. The defense also claimed that the rulings of the High Court were self-contradictory. The Court accepted that the Appellant was working for the benefit of Accused No.3 but nevertheless acquitted the accused.

⁴ In this case the Court explained that withholding the statement of a material witness leads to a *dent* in establishing the case against the accused. If this is done without any convincing explanation, it draws an adverse inference on the prosecution's case. The Court also held that an *Injured* witness is given more credibility than an ordinary witness⁴.

Mahak Chand And Others v. State Of Uttar Pradesh, Criminal Appeal, 1122 of 1993, ¶64.

⁵ In the Hari Sao case, the accused was charged with cheating wherein he represented that X number of bags were present at the time of loading onto the train, however, later only a reduced number of bags were delivered. The Trial and the High Court found the accused guilty of the said offense. Their decision was, however, overturned by the Supreme Court, stating that the false representation made by the accused did not lead to an extra burden on the other party (Railways), and they were unlikely to suffer any loss or damage. In such a scenario, no question of cheating the Railways could be inferred⁵.

Hari Sao and Another v. State of Bihar, Criminal Appeal No. 240(N) of 1966, ¶10

⁶ In the latter case of Mohd. Ibrahim, the Court while assessing the ingredients of *Cheating* held that the act or omission must cause or be likely to cause damage or harm to the person, either in body, mind, or property. The Court reiterated the principle laid in the case of *Dr. Vimla v. Delhi Administration* [1963 AIR 1572] that defrauding someone had two elements, namely- deceit and injury. Injury is not merely any pecuniary loss but refers to the harm caused to one's mind, body, reputation, or such others⁶.

Mohd. Ibrahim and Another v. State of Bihar, Criminal Appeal No. 1695 of 2009, ¶13, ¶15

⁷ Code of Criminal Procedure, 1973, Section 313

⁸ In the Samsul case, the court upheld the principle of *Audi Alteram Partem*, giving the accused the right to defend himself. It stated that those circumstances that are not placed before the accused during his statement under Section 313 of the CrPC, must be removed from consideration. The Court reiterated the principle established in *Asraf Ali v State of Assam* [Criminal Appeal No. 174 of 2001].

Samsul Haque v. State of Assam, Criminal Appeal 1905 of 2009, ¶13, ¶22.

7. The Counsel for the Appellant claimed that the act of issuing loose cheques was not illegal or wrong *per se* and that the three cheques issued in favor of Accused No.3 were duly accounted for in the other ledger books of the bank. Requesting the Court to view the said scenarios and the fact that the bank suffered no loss, the Counsel pleaded the Court to take a *Compassionate* view.
8. The senior Counsel further argued that the allegations under Section 409 and 420 of the IPC cannot be leveled together and are contradictory. This contention raised by the advocate was seen by the Court as one being academic in nature and was left unattended.

Arguments Of The Prosecution-CBI

1. The Additional Solicitor General (ASG), appearing on behalf of the CBI, argued that there was no question of law raised in this appeal, and it was a mere mixed question of law and facts that have been ascertained by the Courts below. The ASG urged the Court to recognize the Limitations in power under Article 136 of the Indian Constitution⁹, relating to fact-finding¹⁰.
2. The ASG also contended that to establish *Mens Rea* under Sections 409, 420, and 477A, it is not required to prove any loss suffered by the bank or any benefit enjoyed by the Appellant. The Counsel alleged that the charge was borne due to the unauthorized conversion of an individual's funds. The Appellant worked for the benefit of Accused No. 3, and the unjust withdrawals cannot be justified.
3. The ASG argued that the Appellant was placed as a *Custodian* for the bank and was responsible for proper conduct. The burden shifted to proving that the Appellant acted in complete Good Faith and all requirements or checks were followed. The Learned Counsel relied on the dictum of *NV Subbarao v. State*.¹¹ He also applauded the Court's decision to convict the Appellant on assumptions.

⁹ The Constitution of India, Article 136.

¹⁰ The Courts in several decisions like *Ganga Kumar v. State of Bihar* [Criminal Appeal 1186 of 1999] and *Dalbir Kaur v. State of Punjab* [1977 AIR 472] has held that the authority of the Court vide Article 136, for criminal cases, does not extend to interfering with the fact-findings of any case. The same is allowed only in *Special Circumstances* when the facts ascertained by the lower courts lead to gross injustice.

¹¹ In the case of *N.V. Subbarao v. State*, the accused was the Branch Manager of the Central Bank of India, and was charged under Section 420 of the IPC, among others, for defrauding the Bank. The Court, *inter alia*, noted that even though the accused claims all the transactions to be genuine, it is his burden to establish that all the conditions were met satisfactorily. He, being the custodian of the Bank, has to shoulder the entire responsibility.

4. The ASG also relied on two other case laws: *Vinayak Narayan Deosthali v. Central Bureau of Investigation*¹² and *Neera Yadav v. Central Bureau of Investigation*.¹³

Analysis By The Court

The Supreme Court analyzed two issues in the said appeal

1. Whether any case was made for the Court to intervene in the findings of the High Court and the Trial Court?
2. Whether the sentence against the Appellant on the charges of Section 409, 420, and 477A of the Indian Penal Code, along with Section 13(2), when read together with Section 13(1)(d) of the PC Act?

Issue 1-

The Court concurred with the contention of the ASG, recognizing the limitations imposed against Section 136. The Court prohibits itself from engaging in a decided case, where there only arises a question of fact or a mixed question of law and fact. The only exception to such a scenario is where the Courts have misjudged a piece of material evidence or have not examined it at all.

Concerning the case at hand, The Court held that the task of the lower courts, including the High Court, is not limited to deciphering evidence but includes applying relevant laws to the matter presented before it. The Court also acknowledged the inconsistencies as mentioned by the Appellant in his defense [Argument of the Appellant 5]. The Courts also had, *inter alia*, mixed up the charges against the accused since he was first tried for the issuance of three loose-leaf cheques but was convicted for the *Fraudulent* closure of the two FDRs. Keeping in mind the principle of Criminal Law that

*‘It is better to acquit a suspicious than convicting one innocent.’*¹⁴

¹² In this case, the accused being acquainted with the practices of the Bank, was held guilty. The Court also viewed the conduct of the accused as a series of events, rather than viewing the misconduct in isolation. While substantiating Section 405 of the IPC, the Court laid that the section is attracted even when one allows somebody else to misappropriate the property entrusted to him. The section applies in both a negative and positive case, in a negative manner it relates to using dishonesty to dispose of the property. The positive case includes the misappropriation or conversion of property.

Vinayak Narayan Deosthali v. Central Bureau of Investigation, Criminal Appeal 346 of 2004, ¶361

¹³ The accused in this case, was the Chairman-cum-Chief Executive Officer (CCEO) of Noida and was charged with abuse of power, vide Section 13(2) and 13(1)(d) of the Prevention of Corruption Act. The Court held that the charge of *Criminal Misconduct* would be attracted when the accused obtains anything valuable or of monetary advantage by corrupt practices. The Court also held that such a gain can be in the favour of the accused or any other person in his relation. The Court reiterated that when an office-bearer acts in *Flagrant violation* of norms to uphold his interests, bypassing the public need, he has abused his power as an official.

Neera Yadav v. Central Bureau of Investigation, Criminal Appeal 253 of 2017, ¶ 49

The Courts determined that it was within their power to delve into this matter.

Issue 2-

The Bench of three Justices pondered the applicability and scope of Section 409, 420, 477A of the Indian Penal Code. Through all the three sections, the common essence can be understood as the elements of *Fraud, Undue Advantage, Deceit, and Misappropriation*. Apart from these sections, other provisions of the law were also used extensively, including section 313 of the CrPC, The Prevention of Corruption Act, etc.

Section 409

The Appellant was charged with ‘*Criminal breach of trust by a banker*,’¹⁵ the Court, while examining this charge, referred to the case of *Sadhupati Nageswara Rao v. State of Andhra Pradesh*.¹⁶ While establishing the ingredients of Section 409, the Court reiterated that the expression, *criminal breach of trust*, as defined under Section 405, must first be proven. As noted by the Court, the most essential element was establishing *Entrustment and Misappropriation*.

Entrustment of Property- The person accused of an offense under Section 406¹⁷ must be held in a position of *trust* and must be handed over some property. The law under section 405 is worded widely, including within its ambit ‘*In any manner entrusted with property*,’¹⁸ thus, it also includes office clerks, partners, etc. As observed by several Court Judgements¹⁹, the word Entrustment as used in the law includes any voluntary handing over of the property to somebody who disposes it *dishonestly*, contrary to the instructions given to him.

Misappropriation- In order to qualify an offense under Section 405 of the IPC, the act done must be, *Dishonest Misappropriation*. As defined by Sections 23 and 24, dishonesty is causing an

¹⁴ N. Raghavender v. State of Andhra Pradesh, writ petition 10509 of 2019, ¶137

¹⁵ Indian Penal Code, 1860, Section 409

¹⁶ The Appellant was a dealer at a Fair-Price Shop, and was required to distribute free rice under the Food for Work Scheme, and maintain the accounts of the rice distributed. In the year 2002, a complaint was filed regarding the irregular supply of rice, that is, an *essential commodity*. On inspection, the officials could not get true records/accounts from the Appellant. It was recorded through evidence that the Appellant could not explain the correct accounts, and that he distributed the grains against the express statutory orders. The Court also recognised that the Appellant was ‘entrusted’ with the essential commodities. The Court found the Appellant guilty under Section 409, claiming that no leniency or sympathy could be shown, especially when the property entrusted, was essential commodities.

Sadhupati Nageswara Rao v. State of Andhra Pradesh, Criminal Appeal No. 1159 of 2012, ¶9, ¶11

¹⁷ Indian Penal Code, 1860, Section 406- Punishment for criminal breach of trust

¹⁸ Indian Penal Code 1860, Section 405

¹⁹ Somnath Puri v. State of Rajasthan, 1972 AIR 1490; State of Punjab v. Pritam Chand, Criminal Appeal no. 28-DBA of 1991

unlawful loss or gain; that is, it causes a loss or benefit that one is not legally entitled to. The onus to prove such misappropriation is on the Prosecutor; however, he is not required to confirm the exact manner the goods were misappropriated.²⁰

In this case, the courts reiterated that the mental element of the accused was the decisive factor, and without any intention of the accused to misappropriate the property in question, a charge under Section 405 could not be proved. It must also be noted that the Court provided that the property must be misappropriated in a way that puts it out of the owner's use for enjoyment by the accused.

It can also be understood that Section 409 deals with an aggravated form of Section 405, where the accused is a public official or a banker. Thus, the only extra burden on the Prosecution after establishing a charge under Section 405 is to prove the capacity of the Accused.

The Court defined the burden of proof on the Prosecution as establishing an *Entrustment*²¹ with the accused and reiterated that once this is based, the accused has to prove that the entrusted property was lawfully disposed of or handled.

In relation to the present matter, the Courts noted that the relation between the depositor and the bank is that of a creditor-debtor²². The money deposited by the former is not held on *trust* by the bank, and the latter is free to use the money in any way as they deem fit before the depositor calls upon it.

Further, the Court stated that the only person to explain the facts was B. Satyajit Reddy. Accepting the contention of the Appellant [Argument of the Appellant-1] that the non-examination of material witness proved *Fatal* to the Prosecution's case, the Court refused to make any assumptions about the genuineness of the two letters written by Reddy.

For the reasons mentioned above, the Accused was acquitted under Section 409 of the IPC.

Section 420

Section 420 of the IPC criminalizes cheating and dishonestly inducing the delivery of property. The Division bench, in this case²³, followed the judgments of cases, such as the *Binod Kumar case*²⁴, in establishing the required ingredients as-

- 1) **Cheating**- The element of cheating is defined under Section 415 of the Indian Penal Code, 1860²⁵. As mentioned in the said provision, it includes dishonest

²⁰ N. Raghavender case *supra*, ¶162

²¹ N. Raghavender *supra*, ¶145

²² N. Raghavender case *supra*, ¶162

²³ N Raghavender case *supra*, ¶147

²⁴ Binod Kumar and others v. State of Bihar, Criminal Appeal No. 2327 of 2014, ¶17

²⁵ Indian Penal Code 1860, §415

deception by an individual, by which the victim is either made to deliver property or is induced to act in a way that he would not, otherwise.²⁶ Thus, there lay two essential ingredients for the offense of cheating, *i.e.*, dishonest inducement and intentional inducement.²⁷ The details of what causes the required deception are a matter of fact that must be established via evidence.²⁸ The Courts held that to show an offense under Section 415; it is essential that the deceit was practiced prior to the delivery of goods.²⁹

- 2) **Fraudulent or dishonest inducement of delivery-** In order to establish an offense under Section 420, dishonest inducement is a *sine qua non*. Mere deceit is not sufficient to attract the offense. The Prosecution must prove that through the fraudulent inducement of the accused, the victim delivered the property. An important decision, in this respect, is the case of *Mahadeo Prasad v. State of West Bengal*,³⁰ where the accused promised to pay the complainant in cash, thereby inducing him to deliver cans of tin to the accused. It was realized later that he had no such intentions of paying, and thus he was convicted under section 420. Such a false inducement or pretense need not be in words but can be inferred from the Accused's acts.³¹
- 3) **Mens Rea at the time of inducement-** It is a general rule in criminal law that in order to qualify as a crime, the act must be done with dishonest intentions, *i.e.*, the element of mens rea is a *sine qua non*. Without any fraudulent intentions of the accused, he cannot be held liable under Section 420.³² As held by the Court in the *Anil Kumar Bose case*,³³ any failure of the employee to work according to the instructions given does not by itself attract criminal liability; this cannot be equated with a faulty intention.³⁴ This was also applied by

²⁶ Hari Sao v. State of Bihar, AIR 1970 SC 843, ¶6

²⁷ Charu Chandra Ghose and Others v. King-Emperor, AIR 1924 Cal 502; Rekha v. Abdul Wahaf, Criminal Original Petition (Md) No. 7734 of 2010, ¶14

²⁸ P.S.A Pillai, *Criminal Law*, LexisNexis, 14th Edition 2021, Page 948.

²⁹ Narayan Das v. State of Orissa, AIR 1952 Ori 149; Ram Nath v. State of MB, AIR 1951 MB 100, ¶6

³⁰ Mahadeo Prasad v. State of Bombay, AIR 1954 SC 724, ¶4

³¹ Shivanarayan Kabra v. State of Madras, AIR 1967 SC 986, ¶4

³² Med Chi Chemicals & Pharma Ltd v. Biological E Lt, AIR 2000 SC 1869

³³ Anil Kumar Bose v. State of Bihar, AIR 1974 SC 1560

³⁴ Id, ¶12, ¶15

the Courts in the present case, noting that the dishonest mindset of the accused implies the 'deliberate intention'³⁵ to cause an unlawful gain or loss.

While deliberating on the said provision, the Court noted that the accused must exercise a guilty conscience when the complainant parted with the money or property.³⁶ The act of the Appellant would qualify as an offense under Section 420 if it were proven that the Appellant cheated Mr. Reddy by prematurely closing his FDR without his consent.

The Court decided in favor of the Appellant due to the absence of any neutral evidence to rebut the genuineness of the two letters written by Mr. Satyajit Reddy. It also stated that without conclusionary proof of a guilty intention, the Appellant was entitled to the benefit of the doubt.³⁷

This decision of the Court finds its support in several cases and the noted words of *Hari Singh Gour*,³⁸ who stated that the only factor distinguishing cheating from misrepresentation is the intention of the accused to cause wrongful loss to the other party or gain to self.

For the reasons mentioned above, the Accused was acquitted under Section 420 of the IPC.

Section 477-A

This provision criminalizes the act of falsification of accounts. The Court provided that to prove a charge U/S 477A, the following must be established-

- 1) The accused must be an employee or must act in the capacity of an employee under the victim.
- 2) The act must be done with the deliberate intention to defraud.

The importance of intention to constitute an offense under this provision was emphasized in the dictum of *Harnam Singh v. Delhi Administration*.³⁹ The Court reiterated that the word 'Wilfully' connotes a deliberate act; that is, the accused must have been aware that the acts committed by him were expressly forbidden by his employers or authorities. In such cases, there must also be a presence of both deceit and injury.

In the case at hand, it was established that the accused was acting in his official capacity as the Branch-Manager, while *allegedly* abstaining from recording the debit of ₹10 Lakhs from account 282. The Appellant, however, was successful in establishing the lack of an intent to defraud, on the following grounds-

³⁵ N. Raghavender case *supra*, ¶148

³⁶ N. Raghavender Case *supra*, ¶148

³⁷ *Id.*, ¶167

³⁸ *Hari Singh Gour, Penal Law of India*, Edn Law Publishers, Volume 4, 11th Edition 1998, Page 4200

³⁹ *Harnam Singh v. Delhi Administration*, AIR 1976 SC 2140, ¶118

- I. In order to establish the *intent to defraud*,⁴⁰ there are two primary elements- deceit and injury.
 - a. **Injury-** The Bank, as had been accepted by the lower Courts and corroborated by several prosecution witnesses, did not suffer any pecuniary loss, and thus, there was no injury.
 - b. **Deceit-** The record of the three withdrawals, even though not explicitly mentioned in the Current Account ledgers, were added in the other account registers. Since the different logs were withheld from evidence, the benefit was conferred on the Appellant.
- II. The Courts, before this, had also accepted that the Appellant did not enjoy any personal benefit from the transactions. And thus, no case was made against the Appellant regarding the three transactions, made from Account number 282, dated 23/04/1994, 30/6/1994, and 30/07/1994.

The non-availability of precise evidence to establish the Accused's mental state has also been taken note of by the Courts earlier. However, in the case of *A. Jayaram v. State of Andhra Pradesh*,⁴¹ the Courts noted that the evidence adduced must be '*unimpeachable*' and '*convincing*' to establish guilt beyond any reasonable doubt. In the absence of such conclusionary proof, the Courts give the benefit of the doubt to the accused.

For the reasons mentioned above, the Accused was acquitted under Section 477-A of the IPC.

Apart from this, while examining the Appellant's last argument, about sections 409 and 420 being inherently contradictory, the Court took note of their contentions. However, it decided that the question had to be addressed in an Appropriate case subsequently. The Court also took notice of the gross misconduct by the Appellant in his works against the orders and norms of the bank. Although the Appellant was cautious not to attract criminal liability through his works, he ran the risk of causing a loss to the bank. The Court thus upheld the termination of the Appellant's services and rescinded his rights to any compensation.

Therefore, the Appellant was acquitted on all charges including Section 13(1)(d) and 13(2) of the Prevention of Corruption Act.

⁴⁰ Indian Penal Code, 1860, Section 477A

⁴¹ *A Jayaram v. State of Andhra Pradesh*, AIR 1995 SC 2128, ¶25

Analysis And Discussion

After taking a close look at the case of *N. Raghavender v. State of Andhra Pradesh*, it looks like the Appellant was given the benefit of the doubt due to the failure of the Prosecution in presenting unbiased evidence. The Court also closely examined a few fact-scenarios to assist it in the precise decision of the case. This part of the paper seeks to analyze those key areas of contention and attempt to resolve the question left by the Court for further Academic discussion.

Is There A Conflict Between Sections 409 And 420?

The Appellant in the *N. Raghavender* case argued at length that the charges under Sections 409 and 420 could not be leveled together. While raising the contention, they highlighted that the essential ingredient under Section 409 is the *entrustment* of property, while a case under Section 420 can be made only where the accused *dishonestly induced* the victim to deliver the property.⁴² A similar argument has been raised by several other accused, claiming sections 409 and 420 to be *Anti-thesis*.⁴³ For example, in the case before the Punjab High Court, Justice Ranjit Singh noted,

*‘Obviously, entrustment and deceiving cannot go together.’*⁴⁴

The distinction between the offense of Criminal breach of trust, and dishonest inducement of delivery of property, was brought out eloquently by the Courts in *Mahindra and Mahindra Financial Services Ltd and another v. Delta Classic Pvt. Ltd.*⁴⁵ The primary ingredient to establish the former offense is entrustment, *i.e.*, an absence of a guilty mind at the time of handing over the property. The accused gains a guilty intention after being given possession or right over the property in question. As opposed to this, in Section 420, it is essential that the accused had a guilty mind at the inception of the event, *i.e.*, he gained a right over the property employing cheating or fraud. In light of the said difference, the Court, in this case, noted that one cannot commit cheating and criminal breach of trust in the *‘same breath.’*⁴⁶

However, this is not the only stance taken by the Courts. In the case of *Vadivel v. Packialakshmi*,⁴⁷ the Court appreciated the difference between criminal breach of trust and cheating, as in the former, the

⁴² M. Raghavender case *supra*, ¶26

⁴³ Ulhas Khaire @ Lokeshwar Dev v. State, CR No. 91/16 (Case No. 56308/16)

⁴⁴ Basant Misra and Another v. State of Haryana and others, Criminal Misc. M No.43667 Of 2003

⁴⁵ Mahindra and Mahindra Financial Services Ltd and another v. Delta Classic Pvt. Ltd, Criminal Petition No. 274 of 2008

⁴⁶ *Id.*, ¶17

⁴⁷ Vadivel v. Packialakshmi, 1996 CriLJ 300

delivery of property is voluntary, but in the latter, it is fraudulently induced. But the two offenses remain ‘*mutually exclusive*’⁴⁸ and different in their basis.

On the other hand, in the *Wolfgang Reim case*,⁴⁹ the Delhi High Court explicitly mentioned that one could not be charged with criminal breach of trust simultaneously, owing to the inherent difference in the presence of *mens rea* in both charges. This view of the Court was also upheld by the Haryana High Court.⁵⁰

Even though the Supreme Court has not addressed this question of law, it seems reasonable to concur with the opinion of a majority of the High Courts in stating that the two offenses have bases contrary to one another, and charges under both cannot be sustained together.

Is It Required To Prove Any Loss/Gain To Establish Mens Rea?

The Appellant was charged with Section 477-A against the transaction of ₹10 Lakhs from account 282. To establish a charge under this Section, it is pertinent to prove the presence of an *intent to deceive or defraud*. The Courts, while acquitting the Appellant, took notice of conflicting evidence and decided so mainly because-

- I. The bank had suffered no financial loss.
- II. The Appellant made no personal benefit of the transaction.

This raises a very pertinent question: ***Can mens rea be established in the absence of any loss to the complainant or gain made by the accused?***

As understood from the US decision of *Durland v. the United States*,⁵¹ it is unnecessary to prove that someone was defrauded because the essential element is ‘*scheme to defraud*.’ Whether or not the accused succeeded in his scheme is inconsequential. A similar stance was taken by Hilbery J. as approved in *Dr. Vimla v. Delhi Administration*.⁵² The respected justice, in that case, noted that the accused must have an intention to make the complainant act to his detriment, and it was not necessary to prove that the latter suffered an actual loss. The Court further noted that the injury caused to the person deceived might not necessarily be economical. Deprivation of right also constitutes an actionable injury. Also, in the case of *Kotamraju Venkatrayadu v. Emperor*,⁵³ the learned Chief Justice noted that intent to defraud relates to the intention of causing either a wrongful loss or wrongful benefit.

⁴⁸ Id, ¶9

⁴⁹ Wolfgang Reim and others v. State and Another, Criminal M.S. No. 1942 of 2004

⁵⁰ Jalpa Parahad Aggarwal v. State of Haryana and others, 1987 (2) RCR 427

⁵¹ **Durland v. United States, 161 U.S. 306 (1896), US Supreme Court**

⁵² Dr. Vimla v. Delhi Administration, 1963 AIR 1572

⁵³ Kotamraju Venkatrayadu v. Emperor, Criminal Revision Case No. 463 of 1903

It is not necessary that the accused intends to cause both.

As noted in *Kandipalli Madhavarao v. State Of AP*,⁵⁴ it is essential to establish both deceit and injury to prove an intent to defraud. A person deceives somebody when he induces them to believe in the truth of something he knows is false. Thus, he deceives another utilizing “*suggestio falsi*” or “*suppressio veri*.”⁵⁵ Injury is understood as a non-economic loss.⁵⁶

In the present case, the Appellant skirted around the usual practice of the bank in issuing the three cheques in question. This is certain when the following conduct is viewed together⁵⁷-

1. The Appellant issued loose-leaf cheques, which were allowed only in exceptional circumstances and after a written request by the account holder.⁵⁸ However, there was no evidence of such a written request.
2. While the Appellant entered the issuance of two cheques in the ledger, he omitted to mention the cheque numbers. Further, the same was also entered with a pencil, and thus, was of no permanent marking.
3. It was the practice in the bank for the person receiving the cheque to counter-sign it at the back. In the cheque for an amount of ₹2.5 Lakhs, the signature of the Appellant’s wife was proved. Thus, the amount was collected by her and not by Accused No.3.

The Court, however, decided to acquit the Appellant since there was no harm caused to the bank and since conclusionary evidence was absent. This decision of the Court finds its support in the ratio of *A. Jayaram v. State of Andhra Pradesh*,⁵⁹ wherein the Court noted that the evidence adduced must be ‘*unimpeachable*’ and ‘*convincing*’ to establish guilt beyond any reasonable doubt. In the absence of such conclusionary proof, the Courts give the benefit of the doubt to the accused.

When this is viewed against some of the decisions of foreign jurisdictions, there arise some doubts on the validity of the verdict. For example, in *United States v. D’Amato*,⁶⁰ the Court explained that the victims need not actually be defrauded to establish an intent of defraud. However, the Prosecution must show that some harm was ‘*contemplated*’ by the accused. Thus, the doubtless inference of the

⁵⁴ *Kandipalli Madhavarao v. State Of A.P.*, 2007 CriLJ 4555, ¶18

⁵⁵ Revision vs By Advs.Sri. Sayed Murthala, Crl.Rev.Pet.No. 471 of 2004, ¶10

⁵⁶ *Union of India through its secretary, Ministry of Defense and Others v. Rabinder Singh*, Civil Appeal No. 7241 of 2002, ¶23

⁵⁷ *Vinayak Narayan Deosthali v. Central Bureau of Investigation*, Criminal Appeal 346 of 2004, ¶361

⁵⁸ *N. Raghavender case supra*, ¶7

⁵⁹ *A Jayaram v. State of Andhra Pradesh*, AIR 1995 SC 2128, ¶25

⁶⁰ *United States v. D’Amato*, 39 F.3d 1249 (2d Cir. 1994)

Accused's act must be an intention to cause harm to the complainant.⁶¹ In Australia, for example, the essence of the word defraud is understood as damage to the complainant, as opposed to an advantage derived by the offender.⁶²

Thus, even though the Appellant made no gain, and the bank suffered no actual loss, it is evident that the act of the Appellant was reckless and intended to deceive the bank about the exact details of transactions from Account No. 282. The Appellant also had an easy case to dispose of if it had provided the three additional ledgers as evidence. However, he did not do so; thus, it can also be inferred that there were some discrepancies in the ledger. The only question that arises then is: *whether the Court could consider circumstantial evidence conclusive of the Appellant's guilt?*

Was The Appellant 'Entrusted' With Mr. Reddy's Money?

The Court, in its decision, noted that the relation between a banker and depositor is merely that of a creditor-debtor. The bank does not hold the latter's money through any fiduciary relationship. The Courts have reiterated this point in several decisions like *Bank of Baroda v. Govind Ram Agarwal*.⁶³ In this case, the complainant had deposited his money with the bank in a Fixed Deposit account, similar to the present case. However, the Court noted that since the money was not held on trust, there was no *entrustment* of property to attract Section 405 and 409. As indicated in *Anz Grindlays Bank PIC. And Anr. v Shipping And Clearing (Agents)*,⁶⁴ the money saved in banks is not *trust money* which the bank must preserve and not use. On the contrary, they are lent to others, and the bank's role is that of a debtor rather than a trustee. Referring to the case of Attorney-General of Canada, it was noted that the banker's responsibility is "*mutuum not commodatum*."⁶⁵

However, a relation of agency can be deduced between the bank and a depositor when the latter instructs the bank on how to use the money, for example, when they instruct the bank to pay a monthly sum to a person from their deposited account. This gives rise to a fiduciary relation, wherein the bank holds the money on trust to use the fund as per the directions.⁶⁶ When properties are pledged with any bank for a particular purpose, it qualifies as entrustment. The Court held this in *Jaswant Rai Manilal Akhaney v. State of Bombay*.⁶⁷ Another essential dictum of the Court, in this case, was that the entrustment need not

⁶¹ United States v. Regent Office Supply Co., 421 F.2d 1174, 1180-81 (2d Cir. 1970)

⁶² Lord Radcliffe, in, [Welham v Director of Public Prosecutions](#), [1961] AC 103

⁶³ Bank Of Baroda v. Govind Ram Agarwal, 2007 (3) CHN 60, ¶10, ¶12

⁶⁴ Anz Grindlays Bank P.I.C. And Anr. v. Shipping And Clearing (Agents), 1992 CriLJ 77, ¶10

⁶⁵ Attorney-General of Canada and another v. Attorney-General of the Province of Quebec and another, Privy Council Appeal No. 43 of 1944, ¶22

⁶⁶ Velji Lakhmsey & Co. vs B.R. Banaji, (1955) 57 BOMLR 993

⁶⁷ Jaswant Rai Manilal Akhaney v. State of Bombay, AIR 1956 SC 575

meet all the technicalities of the law of trust.⁶⁸

Although the Court did not analyze this question of fact, it becomes essential to view the same to understand the Court's verdict better. Mr. Reddy was an important customer of the Grameena Bank and had deposited a sum of 14 Lakhs as two FDRs with the bank. The only direct instruction he gave to the bank was that the interest accrued was to be transferred to his savings account. This, however, did not place the bank in any position of trust since they were free to use the deposited money in any way, they deemed fit.

As established in the *Debobrata Gupta case*,⁶⁹ to establish entrustment of property, the property must be handed in trust, where there exists a fiduciary relationship between the parties. There must also be evidence of such direct entrustment.⁷⁰ Therefore, the element of entrustment was not satisfied in the present case. The decision of the Court to acquit the Appellant under Section 409 was thus valid.

Did The Appellant Induce The Delivery Of Mr. Reddy's Property?

The Appellant was charged under Sections 409 and 420 concerning the pre-mature closure of the two FDRs. Even though the Appellant could not be charged under Section 409 for the lack of any entrustment, the charge under Section 420 must be analyzed. For section 420 to be applicable, it must be shown that the property was delivered by deceitful and intentional inducement.⁷¹ Even though it is implicit that the accused must believe in the falseness of the guarantee or representation made by him, it was reiterated by the Courts in *G. Laxminarayan Naidu v. Chitiboina Yerraiah*.⁷²

In the case of *Shri Bhagwan Samardha Sreepadha Vallabha Vishwanandha Maharaj v. State of Andhra Pradesh*⁷³, the facts of which were as follows-

The accused promised that he had divine powers to cure people. The complainant believing such promises, gave money to the accused to cure their daughter.

The Court held that, in such instances, in which there lay a *prima facie* case of dishonest inducement, it might presume the case falls within Section 420. The onus then shifts on the accused to rebut such presumption.⁷⁴

In the present case, the Appellant claimed that he had written permission from Mr. Reddy to transfer his

⁶⁸ Id, ¶13

⁶⁹ Debobrata Gupta v. SK Ghosh, Criminal Appeal No. 134 of 1967

⁷⁰ Dada Rao v. State of Maharashtra, AIR 1974 SC 388

⁷¹ Charu Chandra Ghose and Others v. King-Emperor, AIR 1924 Cal 502; Rekha v. Abdul Wahaf, Criminal Original Petition (Md) No. 7734 of 2010, ¶14

⁷² G. Laxminarayan Naidu v. Chitiboina Yerraiah, 1985 (II) Ori LR 119

⁷³ Shri Bhagwan Samardha Sreepadha Vallabha Vishwanandha Maharaj v. State of Andhra Pradesh, AIR 1999 SC 2332

⁷⁴ Id, ¶8

FDR to account number 282. However, after reviewing the following circumstances, it prima facie appears that there was a case of dishonest inducement-

1. Several officials from the Bank including the Chairman and the succeeding Manager had not seen the two letters *allegedly* written by Mr. Reddy.
2. The Appellant continued to transfer the interest to Mr. Reddy's savings account, not from the Bank's funds, but from his personal account.
3. Mr. Reddy called the Bank to collect the interest on his deposit in September 1995, even though the Appellant had allowed its withdrawal in February 1995.

Furthering Additional Solicitor General's argument, the Appellant was the *custodian* of the Bank, and he had the responsibility of proving that he acted in complete good faith. The dictum of the Court in *N.V. Subbarao v. State*,⁷⁵ laid that it is the duty of the Branch-Manager in proving that all the conditions of caution were carried satisfactorily, and that the transaction was genuine.

In this case, the Appellant put forth only two letters in its defence. However, he cannot be exonerated of his burden through this, because, the genuineness of the letters was in dispute. In the case of *Jaikrishnadas Manohardas Desai v. State of Bombay*⁷⁶, the Court held that such a failure to explain the facts, attracts an inference of dishonest intention of the accused.

In the present case, thus, it was plausible for the Courts to come to a similar conclusion.

Conclusion

After a deeper understanding of the elements required to constitute offenses that N. Raghavender was charged with, the Supreme Court reasoning can be understood better. Although the Appellant was acquitted, it also becomes evident that this was done only because of the absence of *Material Evidence*. When one views the subsequent conduct of the Appellant, following both the transactions in question, the doubt of innocence becomes faint. For example, the Appellant narrowly escaped charges under Section 477A because the Prosecution failed to provide the required Ledger Books as evidence. The arguendo about him not benefitting personally from the transaction could also have been rebutted by a closer examination of the fact that his wife had collected the cheque dated 23rd March 1994. This contradicts his assertions that the cheques were contained by Accused No.3. However, the other presence of other technicalities also pushes the case towards the benefit of the accused. For example, the Court noted that the banker is not a *trustee*⁷⁷ for the money deposited by the customers. The relation

⁷⁵ *N.V. Subbarao v. State*, Criminal Appeal No. 1688 of 2008, ¶15

⁷⁶ *Jaikrishnadas Manohardas Desai v. State of Bombay*, AIR 1960 SC 889, ¶16

⁷⁷ *Bank not a trustee of money deposited by Customers- Customer & Bank are creditor/Debtor: SC*, Taxguru, 31st December 2021, Available [here](#).

between them is that of a *creditor-debtor*, and the bank is free to use the funds deposited by the customer until he calls upon the bank to repay it⁷⁸. Thus, the customer or the depositor does not *entrust* the bank with its money; it is the bank that entrusts it with its employees. In the second transaction, it seems *ex facie* that the Appellant committed a wrong and did not have any authorizations from Reddy. This is evident from the practice of him paying interest to B. Satyajit Reddy after the withdrawal of his FDR. Even though the amount was not paid using public funds, the subsequent conduct of the Appellant could have been viewed by the Courts in finding him guilty. The Courts have noted that where the exact *modus operandi* cannot be ascertained, misappropriation can be proved based on the truth or falsity of the Accused's statements.⁷⁹ Therefore, it would be valid to infer that the Appellant enjoyed the Benefit-of-the-doubt by the Court due to the Prosecution's failure in examining evidence independently.

In other common-law jurisdictions, like the United Kingdom, embezzlement is understood as a white-collar crime, similar to theft. But the differentiating factor between theft or larceny and embezzlement is that the accused is placed in a position of trust in the latter. Simply put, embezzlement is the '*misappropriation*' of goods or property by one who is placed in a position of responsibility concerning the same. The accused may be put in such a position through employment, agency, etc. The accused misappropriates the said property using fraud and has a guilty intention. There lay an element of *breach of trust* in the offense of embezzlement⁸⁰. Thus, Section 409 in India is very similar to the provision of embezzlement under the law of England.⁸¹ However, in England, the punishment for embezzlement is limited to 10 years of imprisonment, fine, or both⁸². In Massachusetts, embezzlement or misappropriation of trust funds is punishable with 5 years of correction home, or jail, or fine, or both.⁸³ When this is compared to the provision in India, allowing life sentences for property crimes, it seems excessive. This is probably why the Courts take a very cautious approach to ensuring that no innocent is charged or convicted for a crime he did not commit. Thus, the approach, taken by the Court in the case of **N. Raghavender v. The State of Andhra Pradesh, CBI**, seems justified. The courts' rationale is to balance the rights of the victim against the plausible rights given to every suspect, and thus, the Courts adopt the highest standard of care in convicting someone only in the absence of *reasonable doubt*.

⁷⁸ N. Raghavender case *supra*, ¶62

⁷⁹ Mustafikhan v. State of Maharashtra, Criminal Appeal No. 1261 of 2006, ¶12

⁸⁰ Fraud Facts, March 2014, Fraud advisory Panel, Issue 17, 3rd edition, Available [here](#).

⁸¹ Samarth Trigunayak, *Criminal Breach of Trust*, Academike, 20th August 2014, Available [here](#).

⁸² Fraud Facts, *supra*

⁸³ General Laws, Part I, Title XXI, Chapter 151D, Section 6, The General Court of the Commonwealth of Massachusetts. Available [here](#).

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