

## Aparajita Nath Vs State of Assam

**Court:** Gauhati High Court

**Date of Decision:** May 6, 2006

**Acts Referred:** Penal Code, 1860 (IPC) – Section 315, 415, 416, 419, 420

**Citation:** (2007) 2 GLR 567 : (2006) 4 GLT 776

**Hon'ble Judges:** P.G. Agarwal, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

P.G. Agarwal, J.

Heard Mr. J.M. Choudhury, learned senior counsel for the petitioner and Mr. D. Das, learned Public Prosecutor.

2. This revision is directed against the order dated 31.3.2005 passed by the Sessions Judge, Kamrup, Guwahati in Sessions case No. 132(K)/

2004 whereby charge u/s 419 IPC has been framed against the petitioner Aparajita Nath.

3. The prosecution allegation, in brief, is that on 11.1.99 the petitioner along with one Sidhartha Rai went to Sacred Home Nursing Home for the

purpose of abortion and at that time she identified herself as Anita Rai although she knew that she is not Anita Rai but she is Aparajita Nath.

4. At this stage, Mr. Choudhury in his usual fairness has not challenged the materials on record in that respect. But it is submitted that even if the

above fact is taken as true it does not construe an offence of cheating as defined u/s 416 IPC. Section 416 IPC reads as follows:

416. Cheating by personation. - A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly

substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

5. In this case, we find that the name Anita Rai taken by the accused was an imaginary name and in view of the explanation given above, we find

prima facie materials to hold that the accused had pretended to be some other person. The question that needs to be determined is whether mere

pretension to be some other person is in itself sufficient to constitute an offence of cheating. From the provisions of Section 416 IPC as quoted

above, we find that pretending to be some other person is one part of the offence but the other part is that one must cheat somebody by pretending

to be some other person. Cheating has been defined u/s 415 IPC which reads as follows:

415. Cheating. - Whoever, by deceiving any person, 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, 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, is said to ""cheat"".

6. In the case of Devender Kumar Singla Vs. Baldev Krishan Singla, the Apex Court while defining cheating u/s 415 IPC had this to say:

7. In order to appreciate the rival submissions, it would be necessary to consider on the background of the factual position as to whether offence

punishable u/s 420 IPC is made out. Section 420 deals with certain specified classes of cheating. It deals with the cases whereby the deceived

person is dishonestly induced to deliver any property to any person 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. Section 415 defines ""cheating"". The said

provision requires : (i) deception of any person, (ii) whereby fraudulently or dishonestly inducing that person to deliver any property to any person

or to consent that any person shall retain any property, or (iii) intentionally inducing that person to do or omit to do anything which he would not do

or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation

or property. Deception of any person is common to the second and third requirements of the provision. The said requirements are alternative to

each other and this is made significantly, clear by use of disjunctive conjunction ""or"". The definition of the offence of cheating embraces some cases

in which no transfer of property is occasioned by the deception and some in which such a transfer occurs. Deception is the quintessence of the

offence. The essential ingredients to attract Section 420 are : (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy

any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security ; and (iii) the mens rea of the

accused at the time of making the inducement. The making of a false representation is one of the ingredients for the offence of cheating u/s 420.

7. A conjoint reading of Sections 415 and 416 IPC show that cheating is an essential ingredient of the offence and as such the act of cheating in

addition to impersonation is a must to constitute an offence u/s 419 IPC. Section 415 IPC no doubt speaks about dishonest concealment of facts

but mere deception is not cheating unless the person so deceived is induced to do certain acts as stated under the section. In the case of Bashirbhai

Mohamedbhai Vs. The State of Bombay, wherein the Apex Court observed that making of the false representation is one of the ingredients for the

offence of cheating and delivery of property is another ingredient and both of these ingredients are required to establish the charge.

8. In the instant case, there is no allegation that the petitioner has deceived the complainant/informant in any manner or that the

informant/complainant was induced to part with any property which is the first part of Section 415 IPC.

9. Now coming to the second part of Section 415 IPC we find that there is no material on record to show that the complainant doctor had

performed the abortion only because the petitioner gave her name as Anita Rai and not Aparajita Nath. The doctor would have performed the

abortion even if the name was reported as Aparajita Nath.

10. The learned Counsel has submitted that the sole purpose for giving an imaginary name and not the real name was to conceal the identity of the

young woman as she had conceived while still single and she wanted to keep the matter of pregnancy a secret. In the circumstances it cannot be

said that the intention was to cheat the informant Dr. Bibharani Goswami or others.

11. In the world of literature, we find there are prominent authors who write under their pen name or anonymous names as they are not inclined to

disclose their identity. Hence, merely writing in other names or identifying oneself in another name without any intention to deceive others cannot be

said to constitute offence of cheating.

12. In the instant case, although police had submitted chargesheet u/s 315 IPC. The learned trial court did not find material to frame charge u/s 315

IPC and the charge was framed u/s 419 IPC.

13. In view of what has been stated above, we find that criminal impersonation even if true, the facts do not constitute an offence u/s 419 IPC and

as such the revision is allowed and the impugned order is set aside. The accused stands discharged.

14. Send down the records.