

BOMBAY HIGH COURT

Durgadas Tulsiram Sood

Vs

State

(Bavdekar, C.J. Vyas , J.)

11.09.1953

JUDGMENT

Vyas, J.

1. These are two appeals by accused Nos. 1 and 2. Appeal No. 672 is an appeal by accused No. 2 and Appeal No. 807 is an appeal by accused No. 1. These are appeals from a judgment of the learned Presidency Magistrate, 23rd Court, Esplanade, Bombay, by which judgment the learned Magistrate has convicted both the accused of offences under Section 120-B of the Indian Penal Code, Section 465 read with Section 34, Section 468 read with Section 34, Section 471 read with Sections 465 and 34 and Section 420 read with Section 511 and 34 of the Indian Penal Code.

2. Originally there were three accused persons in this case. The gravamen of the charge against them was that there was a criminal conspiracy between them to forge an auditors' certificate the purport of which was to show that the past imports of Goldberg India Ltd., for the year 1947-48 received at the port of Bombay were of the value of Rs. 1,15,710 and the purpose of which was to induce the Chief Controller of Imports, Bombay, to grant to the Goldberg India Ltd., an import license for the amount Of Rs. 28,927. The object of the conspirators is alleged to have been to use the above said forged certificate of the auditors as a genuine document for the purpose of cheating the Chief Controller of Imports and inducing him to grant to the Goldberg India Ltd., an import license for Rs. 28,927. It may be noted at this stage that, according to the case of the prosecution, the past imports of the Goldberg India Ltd., for the year 1947-48 were of the value of Rs. 12,360 and that on that basis the company was entitled to an import license for the amount of Rs. 3,090. In other words, the charge against the accused was under Section 120-B read with Sections 465, 468, 471 and 420 read with Section 511 of the Indian Penal Code.

3. The other charge against the accused was that there was a common object on the part of all of them to forge an auditors' certificate the purport of which was to show that the past imports of the Goldberg India Ltd., for the year 1947-48 received at the port of Bombay were of the value of

Rs. 1,15,710 and the purpose of which was to induce the Chief Controller of Imports to grant to the Goldberg India Ltd., an import license for the amount of Rs. 28,927. The common object of them all further was to use the said forged certificate of the auditors as a genuine document for cheating the Chief Controller of Imports, Bombay, and inducing the Chief Controller to grant to the Goldberg India Ltd., an import license for Rs. 28,927. In other words, the charge was under Section 465 read with Section 34, Section 468 read with Section 34, Section 471 read with Section 34 and Section 420 read with Sections 511 and 34 of the Indian Penal Code.

4. The facts of the case as contended by the prosecution may now shortly be stated. Incidentally it may be noted that the original accused No. 3 has been acquitted by the learned trial Magistrate. Accused No. 1 was at the material time (i.e. in the month of March, 1949,) the managing director of the Goldberg India Ltd., Accused No. 2 was the accountant of that company. Accused No. 3, with whom we are not concerned in these appeals, was a director of the said company. The office of the Chief Controller of Imports, Bombay, issues licenses to import articles into India from foreign countries and an established importer has got to make an application to the Chief Controller of Imports if he wants to obtain an import license. While making the application for an import license, the importer has got to make a statement of his past imports made in particular years, and in support of the figures, particulars, etc. of the past imports, he has got to produce either a quota certificate or customs bills of entry or a certificate from a Registered Accountant certifying the past imports. Now, the office of the Joint Chief Controller of Imports, Bombay, received from Goldberg India Ltd., an application dated March 28, 1949. That application is exh. A on the record of this case. It was accompanied by a covering letter of the company and certain other documents, one of which was the auditors' certificate. That auditors' certificate, which is the basis of the prosecution of the accused, is exh. B. It is a certificate purporting to have been issued by Messrs. Kapadia and Mehta, Registered Accountants, Bombay. It is the case of the prosecution that this is a forged certificate. The prosecution contends that the value of the past imports for the year 1947-48 as stated in the upper portion of this certificate was a false value. The figure Rs. 1,15,710 was not a correct figure. The true figure of the value of the past imports for that particular year was, according to the prosecution Rs. 12,360. The prosecution further alleges that the signature "Kapadia and Mehta" which is to be found at the foot of this certificate, exh. B, is not the genuine signature of Kapadia and Mehta, but that it was written by accused No. 1. The application, exh. A, which was made by the Goldberg India Ltd., was signed by accused No. 1. That application along with the accompanying documents was received in the office of the Joint Chief Controller of Imports on March 29, 1949. Mr. Varadkar, who was the Controller of Imports at the material date, felt the necessity of verifying the auditors' certificate. He felt that the value of the hardware items, namely tools and screw drivers as stated in the upper portion of the auditors' certificate and also as stated in the body of the application, exh. A, was unusually large.

Feeling suspicious about the matter, Mr. Varadkar asked one Mr. Mulki, who was an appraiser in his office, to check the details of the certificate of the auditors with reference to the copies of the bills of entry which were being maintained at the Customs House. Mr. Varadkar, upon the result of the checking carried out as above, came to the conclusion that the various particulars which were stated in the auditors' certificate, especially the particulars in regard to the value of the goods, were not correct. Thereupon he wrote a letter on April 12, 1949, to the Goldberg India Ltd., asking the said company to submit the triplicate copies of the bills of entry and also the suppliers' invoices. Goldberg India Ltd., did not respond to the requisition of Mr. Varadkar. Thereupon, Mr. Varadkar sent a reminder to them on May 9, 1949, and on the same day he wrote a letter to the Customs Department asking them to furnish to him particulars and description of the past imports, the value of the said imports, the amount of duty in regard to the bills of entry mentioned in the auditors' certificate, etc. The Customs authorities duly complied with the enquiries made by Mr. Varadkar. (5) It may be noted that in the meantime on May 6, 1949, the office of the Joint Chief Controller of Imports, Bombay, received another application from the Goldberg India Ltd. That application also was accompanied by a covering letter from the company and certain other documents. That application also along with the covering letter was signed by accused No. 1. It was a revised application in which the figure of the value of the past imports was correctly stated and according to that figure the company was entitled to an import license for the amount of Rs. 3,090. The value of the past imports as stated therein was Rs. 12,360 and those were the past imports for the year 1941-48. On May 12, 1949, accused No. 1 as the managing director wrote a letter to the Deputy Chief Controller asking him to treat the earlier application of the company dated March 28, 1949, as cancelled and the reason which he assigned for the cancellation of the said earlier application was that in that application there were clerical mistakes and further that some of the items which ought not to have been included in that application were wrongly included therein. Mr. Varadkar, the Controller of Imports, has stated in his evidence that if he had accepted the application, exh. A, as being an application containing true statements of facts, and if he had accepted the auditors' certificate, exh. B, as a genuine certificate, the company would have been entitled to the issue of an Import license in their favor for Rs. 23,927. He says, however, that in view of the revised application sent by the company on May 6, 1949, the import license to which the company was entitled was a license only of the value of Rs. 3,090. In short, it is the case of the prosecution that the auditors' certificate, exh. B, is a forged certificate, in that the signature "Kapadia and Mehta" at the foot of the certificate is not really the true and genuine signature of Kapadia and Mehta, but that the said signature was written by accused No. 1 himself. In other words, the prosecution says that accused No. 1 committed an offence of forgery in respect of the auditors' certificate and that the said offence was committed with a view to use the said forged certificate in order to cheat and induce the Chief Controller of Imports, Bombay, to grant to Goldberg India Ltd., an import license for Rs.

28,927 on the basis that the value of the past imports of the company in the year 1947-46 was Rs. 1,15,710.

6. So far as accused No. 2 is concerned, the contention of the prosecution is that in pursuance of a criminal conspiracy between himself and accused No. 1, he had put his signature "D. T. Sood" at the foot of the statement of particulars of the past imports for the year 1947-48 of this company, which statement of particulars is to be found in the upper portion of the auditors' certificate, exh. B. The value of the past imports was stated at Rs. 1,15,710 which was a false figure to the knowledge of accused No. 2 and in that manner the prosecution alleges that he also committed an offence of forgery for the purpose of using the forged certificate as a genuine one for the purpose of cheating the Chief Controller of Imports and thereby inducing him to grant to the company an import license for Rs. 28,927. In short, the case of the prosecution against these accused is that there was a criminal conspiracy between them and one more person who has since been acquitted to forge an auditors' certificate and to use that forged certificate as a genuine document for the purpose of cheating the office of the Chief Controller of Imports, Bombay, and inducing that office to grant to their company an import license for an amount to which the company on true facts being disclosed was not entitled.

7. Both the accused have resirited the charge against them. Accused No. 1 contends that he was not a managing director of Messrs. Gold-berg India Ltd., at all. He had only one-fourth share in the company, whereas original accused No. 3 being a relative of two other share-holders was the person mainly in charge of the affairs of the company. It was he (accused No. 3) who was in charge of the bank accounts, cash, stores, sales, etc. Accused No. 1 goes on to say further that he had no power to operate on the bank accounts of the company. According to him, it was accused Nos. 2 and 3 who used to go to the office of Messrs. Kapadia and Mehta for obtaining the necessary auditors' certificates for making applications for import licenses. Speaking about this particular case, accused No. 1 says that when four certificates from the auditors were brought by accused Nos. 2 and 3, he (accused No. 1) asked them whether they had also brought copies of those certificates with themselves. He says that the reply of accused Nos. 2 and 3 to that query was in the negative. Thereupon, he enquired from them whether they had got with them blank forms and they said that they had brought only one blank form. Thereupon, accused No. 1 said that four blank forms were necessary for making out copies of four certificates. Thereafter, on the blank form which accused Nos. 2 and 3, according to accused No. 1, had brought with themselves, he wrote out himself "Kapadia and Mehta" at two places where those words would be found in the auditors' certificate and where those words were actually found in the four certificates of the auditors which were brought by accused Nos. 2 and 3. Then he gave that form and asked the typist of the office to make out copies of the four certificates which were obtained from the auditors by accused Nos. 2 and 3. It is contended by accused No. 1 that he never

intended to forge the signature of Kapadia and Mehta nor did he ever intend that the words "Kapadia and Mehta" which he put down on a blank form would be misused or fraudulently used for the purpose of obtaining a false import license from the Chief Controller of Imports. He says that a perfectly innocent act of his which was only meant to give guidance to the typist as to how he was to proceed while making out copies of the certificates, was misused by accused Nos. 2 and 3.

8. As far as accused No. 2 is concerned, his defense is this. He says that he was only a servant of the company, being an accountant, and had therefore to carry out the orders given to him by the managing director which office was held by accused No. 1. According to him, on March 28, 1949, at about 4-30 o'clock in the afternoon, he was told by accused No. 1 that a peon of the company had gone to the post office to post an application for an import license which application was accompanied by certain documents. Accused No. 2 was asked by accused No. 1 to run up to the post office and see whether the application itself and all the documents which accompanied the application were duly signed. Accused No. 1, according to accused No. 2, said that it was possible that some of the papers might have remained unsigned. Accused No. 2 was further told by accused No. 1 that in case he found that some papers were left unsigned, he should himself sign those papers. Upon receiving these orders from accused No. 1, accused No. 2 says that he went to the post office and found that the peon had not yet posted the envelope. He took back the envelope, looked into the papers and found that in the upper portion of ex. B, which is the auditors' certificate, there was no signature of anybody at the foot of the statement of particulars and details regarding past imports. So, he put his own signature at the place, namely the signature "D. T. Sood" which we find at the foot of the upper portion in ex. B. He says that that was done by him perfectly innocently, that there was no dishonesty behind it and that accused Nos. 1 and 3 had combined subsequently to bring the whole blame upon him when they found that they were themselves getting into trouble.

9. Now, the offences under Sections 465, 468 and 471 of the Indian Penal Code are non-cognizable Offences. An offence under Section 420 of the Code is a cognizable offence. Now, Mr. Somjee for accused No. 1 has invited our attention to Section 196-A of the Criminal Procedure Code and Section 186A says that an offence of criminal conspiracy to commit non-cognizable offences cannot be taken cognizance of by a Court unless there is a sanction by the State Government or a Chief Presidency Magistrate. Mr. Somjee contends that since offences under Sections 465, 468 and 471 are non-cognizable offences and since an offence of criminal conspiracy to commit such offences cannot be taken cognizance of without the sanction as required by Section 196-A of the Criminal Procedure Code and since no such sanction was obtained from the State Government or the Chief Presidency Magistrate in this case, the trial of the accused was void 'ab initio.' It is true, says Mr. Somjee, that an offence of criminal conspiracy

to commit an offence of cheating under Section 420 of the Indian Penal Code is cognizable and the taking of cognizance of that offence by a Court requires no sanction either from the State Government or from the Chief Presidency Magistrate or from any officer. But, Mr. Somjee says that in this case the charge was one composite charge under Section 120-B read with Sections 465, 468, 471 and 420 read with Section 511, that the trial was one and that this is not a case where the trial for an offence under Section 420 could have been severed from the trial for offences under Sections 465, 468 and 471 of the Indian Penal Code. Therefore, says Mr. Somjee, since the trial of the accused for an offence of criminal conspiracy to commit offences under Sections 465, 468 and 471 was void 'ab initio' for want of sanction, the whole trial was void and bad.

10. Mr. Desai for the State of Bombay makes a distinction between the object of an offence and the means to achieve that object. He says that the object of the accused was to cheat the office of the Chief Controller of Imports, Bombay, and to induce the Chief Controller to grant to Goldberg India Ltd., an import license for the amount of Rs. 28,927 and that the means which the accused employed in order to achieve that object were to forge an auditors' certificate and to use that certificate as a genuine document for carrying out the fraud or deception on the office of the Chief Controller of Imports, Bombay. In support of his contention that such a distinction between the object of an offence and the means employed to achieve that object is a perfectly valid distinction, Mr. Desai has invited our attention to a decision of this Court in -- *'Ramchandra Rango v. Emperor'*¹, In the course of his judgment in that case, Mr. Justice Wassoodew observed thus (pp. 135, 136) :

"..If the object is to commit non-cognisable offence, undoubtedly sanction under that section is essential to give jurisdiction to the Court. Now, the object of the conspiracy has to be determined at the initial stage not only by reference to the sections of the penal enactment referred to in the complaint but also upon the facts narrated therein and the evidence tendered before the Magistrate:.. There is recognisable difference between the object of a conspiracy and the means adopted to realise that object. If they are separable, then, even if the object is sought to be attained by resort to non-cognizable offences,.... sanction is not necessary. It does not matter if the object is erroneously mixed up with the statement of method of attaining it in the body of the complaint."

11. This decision was followed in -- *'Paresh Nath V. Emperor'*, AIR 1947 Cal 32 (B). The decision in *'Ramchandra Rango v. Emperor (A)'* is a decision of a Division Bench of our own Court. We must follow that decision and hold that since the object of the accused in this case was to cheat the office of the Chief Controller of Imports, Bombay, and thereby induce that office to issue in favour of Goldberg India Ltd., an import license for Rs. 28,927, that is, since the object

of the accused was to commit an offence under Section 420, the taking of cognisance of that offence required no sanction, and since the commission of offences under Sections 465, 468 and 471 of the Indian Penal Code was only a means to that end, the trial was not vitiated simply because no sanction was obtained for prosecuting the accused for an offence of criminal conspiracy to commit non-cognizable offences under Sections 465, 468 and 471 of the Indian Penal Code.

12. Next Mr. Somjee has drawn our attention to the language of Section 420 of the Indian Penal Code itself and he says that the provisions of Section 420 of the Code will not apply to the facts of this case. He says that Section 420 would only apply when the offence of cheating was committed first and there was a dishonest inducement of the person cheated thereafter. He says that before a Court could convict a person of an offence of attempting to cheat, namely an offence under Section 420 read with Section 511 of the Indian Penal Code, it must be satisfied that the offence of cheating was first committed by the accused person and that thereafter he had attempted to induce the person cheated dishonestly to do a certain thing. We are of the view that this reading of the section by Mr. Somjee is not a correct reading. There is no doubt that an offence under Section 420 read with Section 511 would be committed by a person who attempts to cheat another person and thereby attempts to induce him to do one or the other of the acts mentioned in Section 420 of the Indian Penal Code. In this contention of Mr. Somjee, therefore, we do not see any force.

13. Then Mr. Somjee has advanced another contention before us in regard to the, applicability of Section 420 to the facts of the present case. Section 420 reads thus:

"Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security etc. etc."

Mr. Somjee contends that an offence under Section 420 of the Indian Penal Code is an offence against property and that, therefore, the prosecution must prove that before the accused person, namely the alleged cheat, induced another person to deliver a particular thing, the said thing was the property of somebody else, i.e. somebody other than the accused. Mr. Somjee's argument obviously is that since the import license which Goldberg India Ltd., attempted to get from the office of the Chief Controller of Imports, Bombay, was of no value to the said office or to the State so long as it was with that office and had not gone into the possession of the accused, the license could not be said to be "property" within the meaning of Section 420, and if the office of the Chief Controller of Imports was induced to part with that license in favour of the accused, it could not be said that the accused had induced it to deliver "property" to them. It is obvious that for sustaining this, argument. Mr. Somjee relies on the wording of the heading of Chapter 17 of

the Indian Penal Code. The heading is: "All offences against property". Now, the heading of a chapter does not control the language of the sections to be found in that particular chapter. Odgers in his "Construction of Deeds and Statutes", 3rd edn., says (p. 227) :

"Headings.--These are in some modern statutes since 1845 prefixed to sections or sets of sections and are regarded as preambles to those sections. This is stated in Maxwell and was quoted with approval by Parwell, L. J., in --'Fletcher v. Birkenhead Corporation', (1907) 1 KB 205 at p. 218 (C) who added: Taking the doctrine so expressed as a guide in such a case I cannot read prefatory words of this kind so as to strike out plain words, but only for the purpose of explaining doubtful expressions in the body of the section.' The same rule, in fact, as that applied to preambles, as stated above.

With reference to the cross-headings in the Rating and Valuation Act, 1925, Lord Goddard, C. J., said: 'But while the Court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is quite clear that you cannot use such headings to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning'. 'Rex v. Surrey', 1948-1 KB 28 at p.

32 (D).

So Lord Darling in delivering the judgment of the Judicial Committee in -- '*Martins v. Fowler*², said: 'It is clear that such headings as those referred to (headings to sections) may be regarded as preambles to the provisions following them. This is so stated in Maxwell on Interpretation of Statutes and has received judicial authority from Forwell, L. J. in -- 'Fletcher v. Birken-head Corporation (C)' and also from the Privy Council in -- 'Union Steamship Co. of *New Zealand v. Melbourne Harbour Trust Commissioners*³', to mention no others'."

14. It is clear, therefore, on the authority of the judicial decisions referred to in the above-mentioned quotation, that the language of the heading of a chapter does not control the sections to be found in that particular chapter. It is to be regarded only as a preamble to the sections which follow. In our view, the word "property" occurring in Section 420 of the Indian Penal Code does not necessarily mean that the thing of which a delivery is dishonestly desired by the person who cheats must have a money value or a market value in the hand of the person cheated. Even if the thing has no money value in the hand of the person cheated, but becomes a thing of value in the hand of the person who may get possession of it as a result of the cheating practised by him, it would still fall within the connotation of the term "property". Now, if the word "property" in Section 420 is taken to mean a thing which has a value while it is in the hand of the person cheated, even so in this particular case we are of the view that the import license which was sought to be got by the accused from the office of the Chief Controller of Imports, Bombay, was property within the meaning of Section 420 of the Indian Penal Code.

In -- '*Krishnan In re*, AIR 1948 Mad 268 (G) a question had arisen whether a license for the

driving of motor cars and other vehicles was property. It was not denied of course that such a license was property in the hands of the licensee and it is not denied in the present case also that the Import license, if it had been given to Goldberg India, Ltd., by the office of the Chief Controller of Imports, would have been property in the hands of the licensees. It was argued in the abovementioned Madras case that the license in question in that case had not become property until it had reached the hands of the licensee, and that so long as it was in the possession of the licensing officer, it was not property but was merely a worthless piece of paper. The High Court was prepared to agree that not every tangible object might be property; for instance, they said that a piece of discarded rubbish thrown away in the street was perhaps not property. Their Lordships used the word 'perhaps' as they were not entirely sure that even the discarded rubbish was not property. They said that perhaps it was not property. Then their Lordships went on to say that they did not think that the license with which they were dealing in that case could be placed in the same category as the discarded rubbish. The Court was mindful of the fact in that case that the license had no monetary value to the licensing authority. But it was observed that, apart from the intrinsic value of the paper on which it was written, it had a substantial potential value. As soon as the license reached the hands of the licensee, it acquired an actual value and the decision in that case proceeded on the basis that if a particular thing has got a potential value as distinguished from its actual value, the potential value would be sufficient to call that thing "property" within the meaning of Section 420 of the Indian Penal Code. The pertinent observations which the Court made in this context were (p. 270) :

".....Nor can it be said that an object becomes property only when it comes into the hands of some person who has an actual use for it....The licensing authority was not willing to part with the license except to the person in whose name it was issued and he was parting with it for valuable consideration paid by the licensee. We do not, therefore, think that because to the licensing authority the license was of little or no actual value it was not property."

These observations would apply to the facts of the present case, because here also the office of the Chief Controller of Imports was not willing to part with the import license except to the person in whose name it would be issued and who would have to pay valuable consideration, for it. In the case before us there is no doubt that the license had potential value even when it was in the hands of the Chief Controller of Imports. The policy of issuing import licenses has a considerable bearing on the question of national economy. If more Imports come into the country, it is obvious that the exchange conditions in the country would worsen, the trade conditions would suffer and the prosperity of the country as a whole would be jeopardised.

It is, therefore, that the authority issuing such licenses had to satisfy itself that certain conditions

were fulfilled before the licenses could be given. Before an import license would be given, the licensing authority would examine the question how the national economy would be affected by the grant and from that point of view there is no doubt that an import license has got a considerable potential value, and that being so, in the light of the abovementioned authority we have no difficulty in holding that an import license, even when it is in the hands of the licensing authority, is property within the meaning of Section 420 of the Indian Penal Code.

15. In -- '*Local Government v. Gangaram*'⁴, also, it- was observed that a certificate that a person had passed an examination was property within the meaning of Sections 415 and 420 of the Indian Penal Code. Therefore, a person who obtained a certificate from a Deputy Inspector of Schools by stating untruly that lie passed the examination in a certain year, Was guilty of an offence punishable under Section 420 of the Indian Penal Code. In the course" of his judgment, Dhobley A. J. C. said (p. 231):

"....It is contended for the accused that the certificate cannot be called 'property' as it has no value whatsoever, it being merely a piece of paper. Whether a certain article is or is not 'property' does not depend upon its possessing a money or market value. An article may not (etch any money in the market and still it may have a value to certain persons, in my opinion, the certificate which the accused obtained from the Deputy Inspector had a special value to both of them, though that value could not be computed in money."

This would also show that although a particular thing may not have actual money value or a market value in the hand of certain person, it may still have potential value and would Be property within the meaning of Section 420 of the Indian Penal Code. It is, therefore, clear that even if the term "property" be construed to mean a thing which has a value in the hand of the person cheated, even so in the hands of the licensing authority the import license in this particular case, which certainly had a potential value, would be property within the meaning of Section 420 of the Indian Penal Code.

16. On the other hand, if the word "property" is construed to mean that which acquires actual value only after it goes into the hand of the person who cheats, even then there is no doubt that the provisions of Section 420 must apply to this case. For this, no authority is needed. Nobody disputes that the import license was a thing of considerable actual value to the licensees, namely Goldberg India, Ltd. Therefore, Mr. Somjee's eubmission, namely that the provisions of Section 420 of the Indian Penal Code would not apply to the facts of this case as the import license was not property within the meaning of Section 420, has no force.

17. If we examine the position in the English law on this subject, we find that there is a section which corresponds to Section 420 of the Indian Penal Code and that section is Section 32 of the

Larceny Act, 1916, as amended by the Criminal Justice Act, 1948. Section 32 of the Larceny Act says:

"Every person who by any false pretence-

(1) with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person; or (2) with intent to defraud or injure any other person, "fraudulently causes or induces any other person

(a) to execute, make, accept, endorse, or destroy the whole or any part of any valuable security;.....

shall be guilty of a misdemeanor and on conviction thereof liable to imprisonment for any term not exceeding five years."In Section 420 of the Indian Penal Code, the word used is "property". In Section 32 of the Larceny Act, the corresponding word used is "chattel", and it was held in -- 'The Queen v. Martin', (1867) LR 1 CCR 56 (I) post, p. 1397, that it was not necessary that the chattel should be in existence when the false pretence was made. We see no reason why we should not construe the word "property" used in the analogous Section 420 of our Code as meaning that the thing in respect of which the offence of cheating is committed may not be property in the hand of the person cheated, but becomes property only upon its passing into the hand of the person cheating.

18. In any case, there is no doubt that the import license which the accused attempted to obtain from the office of the Chief Controller of Imports was a valuable security, because the import license would be evidence of the title of the person possessing it to import foreign goods into India. Therefore, quite irrespective of whether the thing which the accused attempted to obtain from the office of the Chief Controller of Imports, namely import license, was property or not within the meaning of Section 420, it was certainly a valuable security, and from that point of view also, the offence of attempting to cheat, namely an offence under Section 420 read with Section 511, was committed by the accused in this case, because we find that Section 420 says:

"Whoever cheats and thereby dishonestly Induces the person deceived to deliver..... to any person....anything....which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

19. In --- 'Superintendent and Remembrancer of Legal Affairs, Bengal v. Daulatrara Mudi' (J) it was held that a transit pass (it was a forest pass) without which no forest, produce could be

removed was a valuable security within the meaning of Section 30 of the Indian Penal Code. It is obvious that an Import license-without which no foreign goods could be imported would be a valuable security and, therefore, the words of Section 420 "or to make, alter or destroy the whole or any part of a valuable security" would in any event apply to this case and there would in any event be committed an offence under Section 420 read with Section 511, provided of course the prosecution establishes the facts which are alleged against the accused.

20. (His Lordship after dealing with the merits of the case, concluded.) There was, in the circumstances of the present case, a clear criminal conspiracy between the accused to forge the auditors' certificate, Exh. B, and use that forged document as a genuine document for the purpose of obtaining an import license from the Chief Controller of Imports, Bombay.

21. The appeals, therefore, fail and the orders of conviction and sentence passed by the learned* Magistrate upon the appellants are confirmed and; the appeals are dismissed. Bail bonds cancelled, Accused to surrender to their bail.

Bavdekar, J.

22. I agree with my learned brother. I will add a few words on the question as to whether it amounted to cheating by the two appellants to obtain a license by using a forged auditors' certificate. It is contended on behalf of the appellants that inasmuch as the offence under Section 420 is an offence against property, the document in this case which it is alleged the two appellants wanted to obtain from the Controller must be shown to be property when it was delivered and it could not have been a document which was property in his hands. It has got to be remembered however that all the offences in the Chapter are not offences against property, e.g. the offence of cheating itself. It could be committed by a person who, with the requisite intention, practises deception and induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived provided the act or omission causes or is likely to cause damage or harm to that person in body, mind or reputation. It is obvious that this is not an offence against property.

23. The offence in Section 420 corresponds to the offence of false pretences under the Larceny Act of 1916, Section 32 of which lays down as follows: "Every person who by any false pretence-

(1) with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person....."

24. In -- *Regina v. Boulton*⁵, the prisoner was convicted of obtaining by false pretences from a servant of a railway company a railway ticket of the company for a journey by one of their trains, and Wightman J. reserved the question whether the obtaining of such ticket was obtaining a chattel of the company, with Intent to cheat and defraud the company of the same, within the meaning of the corresponding earlier enactment 7 & 8 Geo. IV, C. 29, Section 53. After consideration, Pollock C. B. said that the Judges were unanimously of the opinion that it came within the statute which makes it criminal to obtain a chattel by a false pretence. The ticket 'while in the hands of the party' using it was an article of value entitling him to travel without further payment, and the fact that it was returned at the end of the journey did not affect the question. As in the case of larceny, to constitute an obtaining of a chattel etc. by false pretences under the Larceny Act, there must be an intention to deprive the owner wholly of his property, it has been questioned whether -- 'R. v. Boulton (K)' was rightly decided, though it was subsequently approved by the Court of Criminal Appeal in -- *Horace William Chapman*⁶, but in so far as it decided that the railway ticket was a chattel because while it was in the hands of the party using it, it was an article of value, its authority has never been doubted. It seems to me that the argument of potential value ultimately reduces itself to this argument because an article apparently has a potential value only because it has got an actual value in the hands of the person who obtains it by deception.

25. In the second instance, I think that the license in this case would also be a valuable security for the reason that by that license a right would have been created in the licensee to import goods. It is true, as has been pointed out on behalf of the appellants, that the goods could only be imported after payment was made and the permission to open a letter of credit was obtained. But these things do not make any difference to the fact that by the license a right was actually created. A license, e.g. to use a hotel room does not fail to create a right merely because it may be subject to payment of rent for the use of room.

26. On the merits, so far as accused No. 1 is-concerned, I would not attach too much importance to the fact that he has signed the application which mentions the same figure as is to be found in the forged certificate. When one is the head of an office, one very often signs applications, statements etc. because one has no reason to suspect anything. But the story of accused No. 1 seems to me to be so incredible that, even apart from the corroboration which it receives by the subsequent conduct of accused No. 2 by failing to make enquiries as to how the auditors certified the original application the figures in which were incorrect and his subsequent conduct in trying to make the Controller believe that the mistake to the original application was due to the fact that it was desired that certain applications should be made to the Controller in Delhi, it cannot possibly be said that the explanation given by him is one which may reasonably be true.

27. Appeals dismissed.

Cases Referred.

1AIR 1939 Bom 129 (A)

21926 AC 746 at p. 750 (E)

31884-9 AC 365 (P)

4AIR 1922 Nag 229 (H)

5(1849) I Den 508 (K)

6(1910) 4 Cr App H 276 (L)