

BLACK & WHITE

Law Journal

Issue 4

Volume 1

(November 2023)

Second Reprint

Sections 406, 417 and 420 of the Penal Code 1860

&

Section 138 of the Negotiable Instruments Act 1881

&

Criminal Cases arising out of Contract or Business Relationship

– A Legal Dubiety

An Initiative of

BLACK & WHITE LAW HOUSE

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Black & White Law Journal



Dedicated

to >>

All the dedicated souls who have contributed to develop the legal structure of the society and give us a world where disputes can be resolved through law.

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Publisher

Black & White Law House

Publication

First Publication (December 2022)

First Reprint (May 2023)

Second Reprint (November 2023)

Price : 300.00/- Only



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« ABOUT BLACK & WHITE LAW HOUSE »

Black and White is a Law House consisting of both young professionals and experienced seniors. It aims to facilitate all kinds of legal services from a common network. We believe in providing a comprehensive service to our clients so that our clients find peace inside and also grow confidence observing that they are in the right place.

Our services are not confined to litigation, arbitration and commercial dispute resolution only. Our services extend to consultancy, business related counseling, problem solving through mediation or compromise. We believe in solving legal problems in most easy, convenient and less-expensive way. We maintain utmost sincerity, honesty and accountability with our clients. We do not treat our clients as money making subjects and do not put them under pressure to access expert lawyers only with money. We are selective in terms of clients and cases. We take the cases having points and merits only. We discourage unnecessary litigations. We are working for making justice more accessible and available to all kinds of claimants and sufferers who are in need of legal help and assistance.

We believe that being lawyers we carry out more social responsibility to ensure truthfulness, fairness, righteousness and justice. We are the rebels of rule of law. The rule of law is now not only a matter of constitutional law or state's good governance; it is also a matter of business and corporations. Therefore, we provide positive counselling and motivation to our corporate clients towards making their business more sustainable with profit and fame being more socially committed for the implementation of rule of law. We help them to comply with the domestic and international legal obligations for making their businesses more sustainable and acceptable both domestically and globally. We also help young investors to comply with legal requirements for starting their businesses and dreams.

Apart from legal services, we promote legal research, publications and idea sharing. As a part of that endeavor, we have already published few books which are available in the market. In addition, we have taken initiative to publish research articles on various legal issues. The idea of publishing this journal on different legal issues is one of that vision. Thanks to all for supporting and motivating us. Keep us in your blessings so that we can work hard more and keep adding value to our legal development.



Editor's Message >>

The first publication of this journal was published in December, 2022. In the meantime all the copies printed were sold out. I am grateful to the readers in general and to my colleagues in the profession in particular for their warm reception of the journal. As all of the printed copies were already sold out, many interested minds could not collect their desired copy. So to fulfill their demands, we have reprinted the journal. I hope all of you will accept it warmly and be benefited.

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Sections 406, 417 and 420 of the Penal Code 1860
And
Section 138 of the Negotiable Instruments Act 1881
And
Criminal Cases arising out of Contract or Business
Relationship
– *A Legal Dubiety*

Background to the Study

A *prima facie* polarity is going on whether basing on the same contractual relationship simultaneous proceedings under sections 406/417/420 of the Penal Code 1860 and section 138 of the Negotiable Instruments Act 1881 or Civil Suit are maintainable or not. Some will answer positively while some will negatively, which necessarily leads towards asking a question whether this matter has been settled yet or the fire is going on. The present study will depict the current legal practice on this issue. Hope it will help the law practitioner as well as the inquisitive minds who are still pondering on adding value to this filed by applying their prudence and endeavors. This work is an addition to their devotion as rendered since long and still going on for developing the jurisprudence of the relevant field.

Thus, this study will portray the legal dubiety in simultaneous continuation of proceedings under sections 406/417/420 of the Penal Code 1860 and section 138 of the Negotiable Instruments Act 1881 or Civil Suit.

Section 406/417/420 of the Penal Code

Sections 417 and 420 are popularly known for cheating cases. Section 406 is known for misappropriation of fund. Though there is no direct nexus between section 406 and section 420, however while lodging a cheating case under Section 420, generally it is observed that the informant brings allegation of misappropriation of fund if any fund related issue is involved there. For basic understanding the elements of sections 406,417 and 420 are discussed below.

Ingredients under Section 406 ¹

Section 406 provides punishment for ‘criminal breach of trust’². To constitute an offence of criminal breach of trust, the First Information Report/Complaint Petition should have contained the following ingredients ³ –

- a) That the accused was entrusted with property or with any dominion over property;
- b) That the accused dishonestly misappropriated it or converted it to her or his own use;
- c) That the accused held the property in fiduciary capacity.

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust." ⁴

¹ Section 406 reads out as “Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

² Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Dhaka, is agent for Z, residing at Chittagong. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of taka to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.”

³ Sadiul Alam vs. State, 64 DLR (2012) 146.

⁴ Section 405 of Penal Code 1860.