

20.

Ct.29

21.01.2026
Bd.

CRR 2913 of 2025

M/s. JWIL Infra Ltd. & Anr.

-vs-

M/s. I.S. Earth Movers Pvt. Ltd.

Mr. Somopriyo Chowdhury
Mr. Avishek Bhandari

... for the petitioners.

The petitioner herein being aggrieved with the impugned proceeding i.e., C.S. Case No. 5956/2023 presently pending before learned Judicial Magistrate, 11th Court, Calcutta, under sections 420/406/120B of the Indian Penal Code, have preferred the instant application seeking quashment of the aforesaid proceeding.

It is stated inter alia in the written complaint that the opposite party herein is a Company dealing in heavy machineries which is given to various companies on hire charge basis and the petitioners herein and co-accused persons had placed a work order on 16.10.2017 to the complainant for the deployment of equipment for executing the excavation and disposal work at the designated sites on designated dates on monthly hire charge basis at the rate term and conditions as mentioned in the work order. Equipment for execution of the work at the said site were successfully utilized by the petitioner company herein and the complainant raised bills/invoices towards machine hire charges which were accepted by the petitioners herein but it is alleged in the complaint that in spite of several requests the accused persons made only part payments to the

complainant and according to the complainant the accused persons with evil intention and only to cheat the complainant from their legitimate dues had withheld the amount of Rs. 77,50,024/-. Therefore, according to the complainant the petitioners have made wrongful gain and have caused wrongful loss to the complainant and thereby committed offences punishable under sections 406/120B/420 of the Indian Penal Code.

Being aggrieved by the aforesaid proceeding learned counsel for the petitioners, Mr. Chowdhury, submits that the instant case pertains to a purely commercial dispute in a business transaction, where the opposite party/complainant failed to discharge its obligation of excavation within the stipulated time frame of the contract. He further submits that the complainant has admitted in the written complaint about part payment and he further submits that the instant complaint has been filed for recovery of the alleged balance consideration amount.

The opposite party/complainant has suppressed that the time frame of the contract for excavation was for 90 days which was to expire on 20th January, 2018, and the work order also contained clause for liquidated damages in case of failure on the part of the opposite party. In the instant case opposite party failed to complete the work even after expiry of six months after expiry of 90 days. Repeated opportunities were also given to the opposite party but in spite of that the opposite party failed to complete the work.

The opposite party raised two bills totaling to Rs. 1,03,66,755 and odd. From 18th October, 2017 to 21st March, 2018 the petitioner no. 1 herein released a payment of Rs. 66,67,080/-, after deduction of taxes in favour of the opposite party.

In such circumstances, he submits that further continuance of the instant proceeding will be a mere abuse of the process of the court and therefore he prayed for quashing of the impugned proceeding.

Having heard learned counsel for the petitioners it appears that in the instant case the allegation of non-payment of machine hire charges in part is essentially a civil dispute, of which complainant has tried to give a cloak of criminal offence. Averments made in the complaint, even if taken in its entirety discloses under payment which according to petitioners occurred as there was breach of contract of excavation work within the stipulated period, which by no stretch of imagination constitutes offence of cheating or criminal breach of trust. Moreover, admitted part-payment exhibits that the accused persons had no intention to deceive from the inception of the transaction. To constitute an offence of cheating, it has to be shown that the intention of the petitioners/accused persons were to cheat the complainant right from the inception. Therefore, the contents of complaint does not disclose any element of offence of cheating.

Furthermore, there is no allegation in the written complaint that any property was entrusted to the petitioners which they have misappropriated and as such the allegation of criminal breach of trust has also no legs to stand. Furthermore, in view of ratio laid down in the judgment of **Delhi Race Club (1940) Limited –vs- State of U.P. (2024) 10 SCC 690** the allegation under sections 420 and 406 of the IPC cannot co-exist on the self-same set of facts.

It is also well settled that a criminal complaint, if filed to coerce a settlement of the civil/commercial dispute, continuance thereof would be a mere abuse of the process of the court and the criminal court cannot be used as recovery agency. In this context reliance has been placed in the case of **Shailesh Kumar Singh alias Shailesh R. Singh –vs- State of Uttar Pradesh and Ors.** reported in **2025 SCC Online SC 1462.**

Having considered the facts and circumstances of the case and after going through the allegations contained in the complaint it appears that even if the allegations are taken at their face value it gives a clear impression that it was primarily a case where the respondent had alleged breach of work order on the part of accused persons in not making the entire payments for the services rendered by the complainant. On the other hand, it is not in dispute that substantial amounts have been paid by the petitioner/company to the opposite party for the services

rendered. Reasons for underpayment as submitted by petitioner's counsel is that the services rendered by the opposite party were not in terms of the work order. The allegation of dishonest inducement to deploy equipment for executing the excavation work is self-contradictory and has been stated only to attract criminality.

Therefore, even if, all the averments made in the complaint are taken to be correct then also the allegation under section 420/406/120B of the IPC does not attract in the present context and therefore there is hardly any chance of conviction of the accused persons at the end of trial. Therefore, I find that continuance of the instant proceeding any further will be a mere abuse of the process of the Court.

Accordingly, CRR 2913 of 2025 is allowed.

The impugned proceeding being CS Case No. 5956/2023 presently pending before learned Judicial Magistrate, 11th Court, Calcutta is hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)