IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 3705 of 2024

Amrit Cements Limited and Ors.

Versus

Suraj Jha

For the Petitioners	:	Mr. Ayan Bhattacharyya, Ld. Sr. Adv. Ms. B. Ramka, Adv. Ms. Jyoti Barai, Adv.
Heard on	:	24.09.2026
Judgment on	:	16.11.2026
Uploaded on	:	16.11.2026

Ajay Kumar Gupta, J.:-

1. The instant Criminal Revisional application has been preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS') corresponding to Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.), by the petitioner seeking

quashing of the proceeding being CS/55752/2024 under Sections 420/406/120B of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 10th Court at Calcutta including the orders dated April 26, 2024 and June 26, 2024.

2. Petitioner no. 1 is a company within the meaning of the Companies Act, 2013. Petitioner nos. 2 and 3 are the office bearers of Petitioner no.1/company. The opposite party is the complainant.

3. The brief facts of the instant case are that the opposite party herein filed a complaint being CS/55752/2024 on April 26, 2024 before the Court of the Learned Chief Metropolitan Magistrate at Calcutta, alleging commission of offences punishable under sections 420, 406 and 120B of the Indian Penal Code, 1860, *inter alia*, to the effect that the petitioners, after a detailed discussion with the opposite party, had issued an order for renovation work of the head office of the petitioner no.1 situated at Trinity, 226/1, AJC Bose Road, Kolkata-700 020 on June 27, 2023. The total amount fixed for the renovation work was initially Rs. 38,94,000/-.

4. After completion of work as per the work order, a meeting was held on December 6, 2023, where it was decided between the parties that the opposite party would hand over the site to the petitioner no. 1 company and would issue a final bill towards the work done. The opposite party raised a tax invoice for Rs. 35,41,891/- on October 8,

2023, and another one for Rs. 2,92,050/- on November 14, 2023, respectively, for the renovation work.

5. The petitioners, however, had only made an advance payment of Rs. 18,80,000/- to the opposite party and the rest of the expenses of the materials and daily wages of labour were supposed to be paid upon receipt of the final bill. However, the petitioners, even after giving assurances, made no such payment.

6. Consequently, on December 6, 2023, a meeting was held at the office of the petitioner no.1, when the opposite party was asked to raise the closing bill. However, upon receipt of the final bill, the attitude of the petitioner no. 1 changed completely. Even after exchange of correspondence, the petitioners, instead of effecting payments in favour of the opposite party, sought refund of the advance amount to the tune of Rs. 18,80,000/-.

7. The opposite party has allegedly found that the petitioners, in a deep routed conspiracy had cheated the opposite party by not paying the lawful dues of the opposite party and on account of such acts perpetrated by the petitioners, the opposite party had suffered a loss to the tune of Rs. 19,53,941/- as such the opposite party initiated criminal proceedings against the petitioners vide order dated April 26, 2024, the Learned Chief Metropolitan Magistrate at Calcutta [in short, "Learned CMM"] was pleased to take purported cognizance and

transferred the case to the Court of the Learned Metropolitan Magistrate, 10th Court at Calcutta "Learned Trial Magistrate".

8. After receipt of the summons on July 29, 2024, the petitioners entered their appearance through the lawyers and filed this revisional application seeking aforesaid relief.

9. The learned senior counsel, Mr. Bhattacharyya, representing the petitioners, submitted that the petitioners are innocent and in no way connected with any offence, far less the offences alleged herein. The impugned proceeding is a product of suppression of material facts at the behest of the opposite party. The opposite party, by suppressing material facts and twisting information, had beguiled the Learned Trial Magistrate into issuing process without the petitioner's involvement in the alleged commission of the offence, for which alone the instant proceeding requires to be quashed, to prevent abuse of process of law.

10. It was further submitted that for proper appreciation of the present petition the following facts and circumstances are required to be considered by this Hon'ble Court:

(a) In June 2023, the opposite party had in fact approached the petitioner no. 1, representing that the opposite party was a reputed interior decorator and if necessary, as work order may be issued in its favour.

(b) Based on such representation, the petitioner no.1 on June 27, 2023 requested the opposite party for renovation work in it head office and, on an agreement, it was fixed at a sum of Rs.38,94,000/- for completion of renovation of work as per specifications, inter alia, on the following terms and conditions:

(i) The work at the site, being the Head Office of the Petitioner No.1 in Kolkata, was to be completed and the site was to be handed over within 45 days from the date of advance payment remitted by the Petitioner.

(ii) The Opposite Party had provided a warranty against manufacturing defect and workmanship defect for a period of 12 months from the date of installation and/or completion of work assigned to opposite party.

(iii) In case of defective work by the Opposite Party the authorized representative of the Petitioner had the authority to remove, replace and rectify the defect and the cost involved in such removal, replacement and rectification was to be borne by the Opposite Party.

(iv) In case of unsatisfactory progress of work, the Petitioner was entitled to engage other contractor to

complete the balance work at the cost of the Opposite Party.

(v) The final payment was to be released by the Petitioners only after the final completion of work based on quality/quantity measurement.

11. It was further submitted that as per the terms of the service order and representations made by the opposite party, the petitioner no. 1 had paid a sum of Rs. 19,80,000/- as advance in two tranches, one on June 27, 2023 and then again on August 8, 2023.

12. It was further submitted that on receipt of the advance sum of Rs. 19,80,000/- on the aforesaid dates, the opposite party was required to start the work at site. The opposite party was further obligated to complete the work within 45 days after receipt of the first tranche. However, on July 18, 2023, upon inspecting the site to evaluate the progress and quality of the work undertaken by the opposite party, the petitioners were surprised to learn that not even 30% of the work had been completed by the opposite party. On July 19, 2023, the petitioners wrote an email to the opposite party, thereby raising their concern about such inadequate work and requested the opposite party to enhance the manpower in order to complete the project within the stipulated time. Despite such request and constant reminders by the petitioners, the opposite party wilfully failed to

complete the work within 45 days as stipulated in the service order. The petitioners, having no other alternative, were bound to extend the timeline by granting an additional 30-day period for completion of the work. However, even on further inspection, the petitioners had found that there had been no progress on the work so far.

13. Ultimately, on October 6, 2023, the petitioners had asked the opposite party to vacate the premises and return the possession of the site. Subsequently, the petitioner no.1 was constrained to engage a new interior decorator to complete the renovation work at the said office site, for which the petitioners had to incur an additional expense to the tune of Rs. 30,00,000/-. Subsequently, the petitioners were dumbfounded to receive the lawyer's notice dated November 17, 2023, wherein baseless allegations were made by the opposite party.

14. The petitioners stated that vide reply notice dated December 26, 2023, the petitioners have refuted the contention of the opposite party and have further demonstrated the frivolity of the claim of the opposite party. The petitioners stated that subsequently, the petitioners received another demand notice by the opposite party dated December 13, 2023 and a reply by the opposite party dated January 9, 2024, on baseless allegations. The petitioners state that subsequently, on or around July 22, 2024, the petitioners were surprised to receive the summons from the Learned Magistrate,

although the entire dispute was purely civil in nature and any dispute that arose between the parties could be ventilated before the appropriate civil forum. However, the opposite party tried to paint the disputes in a criminal colour; as such, the same is outrightly required to be thrown out to secure the ends of justice, as agitated by the petitioners. The allegations levelled in the impugned complaint do not make out any offence punishable under sections 420, 406 and 120B of the Indian Penal Code, 1860, since none of the ingredients of the sections are fulfilled.

15. It is trite law that for an offence punishable under section 420 of the IPC, the essential ingredient is deception from inception. In the present case, admittedly a sum of Rs. 19,80,000/- had been paid by the petitioners in favour of the opposite party in two tranches. Such an assertion in the impugned complaint hits the nail on the head, and it exposes the very infirmity in the complaint.

16. It is well settled that non-payment and/or under-payment do not constitute either an offence of cheating under section 420 of Indian Penal Code and for charge under section 406 of the Indian Penal Code is equally misplaced. Section 406 of Indian Penal Code provides punishment for the offence of criminal breach of trust as defined under section 405 of the Indian Penal Code. For commission of offence punishable under section 406 of Indian Penal Code, there has

to be initial entrustment. In the present case, with regard to the contour of the allegations it is evident that the grievances of the opposite party were under payment of the contractual amount. In view thereof, the question of entrustment cannot and does not arise. As a result, thereof, the charge under section 406 of the Indian Penal Code is equally misplaced.

17. The charge under section 120B of Indian Penal Code is again not sustainable. Section 120B of Indian Penal Code provides punishment for an offence of criminal conspiracy as defined under section 120A of Indian Penal Code. The crux of an offence punishable under section 120B of Indian Penal Code is the making of mind. In the present case, as there was no allegation of making of mind by the petitioners for commission of any illegal act or a legal act by an illegal means, therefore, the charge under section 120B of Indian Penal Code has not also been made out.

18. Finally, it was submitted that the Learned Trial Magistrate had erred in issuing process against the petitioners without conducting enquiry under section 202 of the Code of Criminal Procedure in its true spirit. The Learned Trial Magistrate had mechanically recorded the statement of the opposite party no. 2 and his witness and without examining the veracity thereof, had straightway issued process without postponing the same. Therefore, the Learned Trial Magistrate

has erred in his approach to the provision under section 202 of the Cr.P.C. Therefore, whole proceeding is liable to be quashed.

19. Learned senior counsel appearing on behalf of the petitioner placed reliance on the following judgments to bolster his contentions as aforesaid: -

i. ***Delhi Race Club (1940) Limited & Ors. v. State of U.P. & Anr.***[1] particularly in paragraph nos. 35, 36, 37, 38, 39, 40, 53, 54, 55 and 56;

ii. ***Pradyut Samanta v. State of W.B. & Anr.***[2] particularly in paragraph nos. 19, 21, 27, 28, 29 and 30;

iii. ***Prem Chand Jain and Anr. v. State of West Bengal & Anr.***[3] particularly in paragraph nos. 8, 17, 18 and 20;

20. None appeared on behalf of the opposite party no. 2 at the time of call, and no accommodation has been sought for.

21. Having heard the learned senior counsel for the petitioners and having gone through the materials on record, particularly, the written complaint filed by the opposite party before the Learned Magistrate under Section 200 of the Cr.P.C., this court finds, there was an agreement between the parties in connection with the work for renovation of the head office of the petitioner No.1. It is an

[1] (2024) 10 SCC 690;
[2] 2026 SCC OnLine Cal 3962;
[3] 2024 SCC OnLine Cal 9834

undisputed fact that the total bill was raised by the opposite party to the tune of Rs. 35,41,891/- on October 8, 2023, and Rs.2,92,050/- on November 14, 2023 respectively for the renovation work done by the opposite party out of which a sum of Rs 19,80,000/- had already been paid by the petitioners at the initial stage as advanced to the opposite party.

22. The petitioners' answer is that the opposite party did not complete the work within 45 days, or within the further extension for a period of 30 days allowed, and that they re-took possession of the site on October 6, 2023. They add that they engaged another contractor at an additional cost of about Rs. 30,00,000/- and sought refund of the advance. Whether the work was completed, whether the quality was satisfactory, and whether anything is due on the final bill or must be refunded are questions of fact. Those questions are disputed, and the contract contains provisions on delay, defects, rectification at the contractor's cost and release of final payment only after measurement. The Court expresses no opinion on them on their merits. They are for a civil forum to decide on evidence.

23. The question here is whether the allegations, as made, constitute the offences alleged. Non-payment of a contractual dues, or a dispute over the final bill, is a civil wrong, and a breach of contract does not

become a criminal offence merely because it is alleged to be dishonest.

24. The essential ingredient of Section 420 of the IPC is deception from the inception. In the present case, admittedly the petitioners paid a sum of Rs. 19,80,000/- to the opposite party in two tranches. It is not alleged that the opposite party was induced by deceit to enter the contract. Indeed, the opposite party accepts that the petitioners paid substantial sums as advance. It is not alleged that the opposite party was induced by deceit to enter the contract. Indeed, the opposite party accepts that the petitioners paid substantial sums as advance. For commission of an offence punishable under section 406 of the IPC, there must be initial entrustment of the property. However, in the present case, the property was not entrusted to the opposite party. What is alleged is the failure to pay a debt, which falls outside the ambit of this section.

25. Insofar as section 120B of the IPC is concerned, when the main sections are not attracted against the petitioners, then the allegations with regard to section 120B of the IPC automatically vanish.

26. This Court is of the considered view that there is no iota of evidence to show even prima facie that the petitioners had dishonest or fraudulent intentions at the time of executing an agreement for assignment of work of renovation in the head office of the petitioner

No.1. A dispute arises between the parties when the opposite party claimed that a huge amount was found due and not paid by the petitioners despite discussion, several reminders and legal notice. The opposite party claimed a huge amount is due for completion of assigned work. It was further alleged that the petitioners had not paid the same amount, giving false assurances and discussions.

27. It is an admitted fact that the petitioner made payments to the opposite party on two occasions. Even if certain dues remain unpaid by the petitioners for whatever reason, by no stretch of imagination can the same be termed as a dishonest inducement, cheating, or entrustment. A dispute, purely based on an agreement for completion of assigned work at the head office of the petitioners, is purely civil in nature. Simply because the amounts have not been paid or are outstanding will not make it a case of wilful or dishonest inducement or deception and/or cheating.

28. The complaint indicates that there was no fraudulent or dishonest inducement or deception intentionally practised by the petitioner right from the beginning of the work assigned. If subsequent payment has not been made, that will not tantamount to deception, fraudulent or dishonest inducement, nor would it amount to deception by intentional means right from the beginning of the transaction. Therefore, the case under Sections 406/420 of IPC in the facts of this

case has not been made out. The petitioner was not deceived nor induced to enter into an agreement for completion of renovation work in the head office of the petitioner no. 1. That is neither his case in the complaint, nor was the opposite party dishonestly or fraudulently induced into entering into an agreement. The breach of contract by non-payment of final bill on different pretext cannot be called cheating in the facts of this case.

29. In the above backdrop, together with averments contained in the Court complaint, this Court finds that the ingredients of the offences alleged by the opposite party are absent and missing. Merely because payment has not been made or accounts have not been settled, it does not constitute offences punishable under Sections 406/420 of the Indian Penal Code. The disputes between the parties are purely civil in nature, and criminal proceedings in a civil dispute should not be allowed to continue against the present petitioners; otherwise, it would be an abuse of the process of law. To secure the end of justice, the proceedings deserve to be quashed.

30. Accordingly, **CRR No. 3705 of 2024** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

31. Consequently, the proceeding being CS/55752/2024 under Sections 420/406/120B of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 10th Court at Calcutta

is hereby quashed insofar as the petitioners are concerned, and the orders dated April 26, 2024 and June 26, 2024 passed therein are also set aside.

32. Let a copy of this Judgment be sent to the Learned Court below for information.

33. Interim order, if any, stands vacated.

34. All parties will act on the server copies of this Judgment uploaded on the official website of this Hon'ble High Court.

35. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J.)

P. Adak (P.A.)