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WP-10824-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 16th OF SEPTEMBER, 2026WRIT PETITION No. 10824 of 2026*M/S POWER MECH PROJECT LTD**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Amit Gupta - Senior Advocate assisted by Shri Mayank Upadhyay -
Advocate for the petitioner.*

Shri A. Rajeshwar Rao - Advocate for respondent No. 1/EOW.

*Shri Uday Gupta - Senior Advocate assisted by Shri Kapil Sharma - Advocate for
respondent No. 2.*
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Heard On - 03.09.2026

Pronounced on - 16.09.2026

ORDER

The petitioner, M/s Power Mech Projects Ltd., has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking quashment of Complaint No.414/2022 and all consequential proceedings initiated by the Economic Offences Wing, Bhopal (EOW), on the ground that the dispute between the petitioner and respondent No.2—Mapaex Minerals is purely civil and contractual in nature and has already been subjected to adjudication through arbitration culminating in a reasoned Arbitral Award dated 06.07.2025.

2. It may also be noted that the matter was initially heard at length and reserved for orders on 06.08.2026 after hearing learned counsel for the



petitioner as well as learned counsel appearing for respondent No.1/EOW. Subsequently, on 10.08.2026, although the matter was not listed, learned counsel appearing for respondent No.2 brought to the notice of the Court that respondent No.2 had not been served and, therefore, had not been heard. In view of the principles of natural justice, the matter was thereafter released from the stage of orders and respondent No.2 was afforded an opportunity of hearing, followed by an opportunity to the petitioner to make submissions in rebuttal. Accordingly, the matter has been considered afresh after hearing all the parties and taking into account the pleadings and documents placed on record by them.

3. The facts, in brief, are that the Madhya Pradesh State Mining Corporation floated a tender on 07.10.2019 pertaining to sand extraction projects situated in the districts of Narmadapuram, Sehore and Bhind. Pursuant thereto, a Memorandum of Understanding dated 25.01.2020 was executed between the petitioner, respondent No.2–Mapaex Minerals and M/s Anshika Builders for sharing financial obligations arising out of the tender. According to the petitioner, under the arrangement the petitioner was to bear 60% of the financial commitment while the remaining amount was to be contributed by the other participants. Subsequently, disputes arose regarding performance of obligations under the MoU and connected agreements. Respondent No.2 invoked the arbitration clause by notice dated 21.09.2022. As no consensus could be reached regarding appointment of an arbitrator, proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996 were initiated before this Court in A.C. No.110/2022. By order dated



21.04.2023 (Annexure P/1), this Court appointed Hon'ble Shri Justice Alok Verma (Retd.) as Sole Arbitrator.

4. The record reveals that both parties participated in the arbitral proceedings and led evidence in support of their respective claims and counter-claims. The Sole Arbitrator, after considering the pleadings, documents and evidence, passed a detailed Arbitral Award dated 06.07.2025 (Annexure P/2) whereby both the claims preferred by Mapaex Minerals and the counter-claims raised by the petitioner were dismissed. It is not in dispute that respondent No.2 has challenged the said award by filing proceedings under Section 34 of the Arbitration and Conciliation Act before the competent Commercial Court.

5. The grievance of the petitioner is that after the Arbitral Award was rendered and while challenge thereto remains pending, respondent No.2 lodged a complaint before the EOW alleging financial irregularities and fraud. Pursuant thereto, notices dated 01.09.2025, 02.09.2025, 11.09.2025, 11.02.2026 and 27.02.2026 (collectively Annexure P/3) were issued calling upon the petitioner to furnish various contractual and financial documents. The petitioner submitted a detailed representation (Annexure P/4) contending that the allegations are contractual in nature and have already been adjudicated in arbitration. However, according to the petitioner, the inquiry is continued, compelling the petitioner to approach this Court.

6. Learned counsel appearing for the petitioner submitted that the entire controversy arises out of commercial arrangements embodied in the MoU and subsequent agreements executed between private parties. It was



argued that the dispute pertains to alleged non-performance of contractual obligations, investment commitments, adjustment of accounts and return of amounts, all of which formed the subject matter of arbitration. It was further submitted that respondent No.2, having failed to obtain any relief before the learned Arbitrator and having already invoked the remedy available under Section 34 of the Arbitration and Conciliation Act, 1996 has resorted to criminal proceedings with a view to exert pressure upon the petitioner. Reliance was placed upon following judgments passed by Hon'ble Supreme Court contending that criminal law cannot be employed as an instrument for enforcement of contractual claims and that criminal proceedings arising out of purely commercial disputes amount to abuse of process.

1. Indian Oil Corporation v. NEPC India Ltd., reported in (2006) 6 SCC 736;

2. Anand Kumar Mohatta v. State (NCT of Delhi), reported in (2019) 11 SCC 706;

3. Randheer Singh v. State of U.P., reported in (2021) 14 SCC 626; and

4. Pushkar Jamnekar v. State of Telangana, reported in 2024 SCC OnLine SC 2385,

7. Reliance was also placed upon the decision of the Indore Bench of this Court in *Ayushi & others Vs. State of Madhya Pradesh passed in W.P. No.9880/2021*, wherein it was observed that police authorities cannot assume the role of adjudicators in civil disputes.

8. *Per contra*, learned counsel appearing for the State/EOW opposed



the petition and submitted that the inquiry is at a nascent stage. It was contended that the complaint discloses serious allegations of fraud, criminal breach of trust and diversion of funds amounting to several crores of rupees. According to the respondents, respondent No.2 invested substantial sums pursuant to representations made by the petitioner, but the petitioner failed to contribute its agreed share and thereafter diverted funds to associated entities causing wrongful loss to respondent No.2. It was argued that the existence of an Arbitral Award does not bar criminal investigation and that civil and criminal remedies can proceed simultaneously. Reliance was placed upon *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*, to submit that the present case does not fall within any of the categories warranting interference by the High Court. It was further submitted that the EOW has merely initiated an inquiry and no final conclusion has yet been reached. He prays for dismissal of this petition.

9. Learned counsel for respondent No.2 submits that the present Writ Petition is wholly misconceived and deserves dismissal both on preliminary grounds as well as on merits. It is submitted that the petitioner seeks quashing of the complaint by way of a writ of certiorari, yet the very complaint sought to be quashed was neither filed with the Writ Petition nor placed on record subsequently. In the absence of the foundational document, this Court could not meaningfully examine the challenge. The List of Dates is also conspicuously silent about the filing of the complaint and its date. This assumes significance because the petitioner sought to project that the complaint was filed after the Arbitral Award dated 06.07.2025, whereas the



complaint was, in fact, filed before the EOW on 09.11.2022 and a copy thereof has now been placed on record as Annexure R-2/1.

10. It is further submitted that, despite respondent No.2 remaining unserved, the petitioner did not bring this fact to the notice of the Court and the matter proceeded to hearing, with judgment being reserved on 06.08.2026. More significantly, on 15.05.2026, learned counsel for the petitioner categorically submitted that the complaint had been filed only after the Award dated 06.07.2025, which submission is demonstrably contrary to the contemporaneous record. The non-production of the complaint, omission of its date from the List of Dates, failure to disclose non-service of respondent No.2, and the aforesaid incorrect submission, when considered cumulatively, demonstrate suppression of material facts and an attempt to present an incomplete and misleading factual narrative before this Court. A litigant invoking the extraordinary and discretionary jurisdiction under Article 226 of the Constitution is required to make a full and candid disclosure of all material facts. Having failed to do so, the petitioner has disentitled itself to such discretionary relief. Reliance in this regard is placed upon the judgment passed by Hon'ble Supreme court in the case of *S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1*, particularly paragraphs 5 and 6 and the relevant placitums.

11. It is next submitted that the communications issued by the EOW, relied upon by the petitioner as the cause of action and filed as Annexure P-3, merely call upon the petitioner to join the investigation and furnish information within its knowledge or possession. The petitioner has not even



challenged the legality of those communications, yet has failed to cooperate with the investigating agency. The complaint has not been converted into an FIR and the EOW is still examining the allegations and material to determine whether registration of an FIR and further criminal proceedings are warranted. The communications are in the nature of notices under Section 41-A of the Code of Criminal Procedure requiring the petitioner to participate in the investigation. The petitioner cannot, without joining the investigation, seek to interdict it at its inception. The fact that civil/arbitral proceedings were pending after the filing of the complaint in 2022 could not, by itself, efface the allegations of criminality; nor was there anything impermissible in the EOW taking into consideration the outcome of the civil proceedings before proceeding further. Thus, the prayer for quashing the complaint at a stage when there is neither an FIR nor a crystallised criminal prosecution, is premature. While an appropriate protective remedy may be available in accordance with law upon receipt of a notice under Section 41-A Cr.P.C., the petitioner cannot seek quashing of the underlying complaint merely to frustrate or pre-empt an investigation which is yet to culminate in a final decision.

12. Without prejudice to the aforesaid preliminary objections, learned counsel submits that the contention on merits that respondent No.2 has merely attempted to give a criminal colour to a civil dispute is equally untenable. There is no legal bar to the simultaneous continuation of civil and criminal proceedings arising from the same transaction. The two proceedings operate in distinct fields and the pendency or outcome of civil proceedings



does not, by itself, extinguish criminality. Reliance is placed upon the judgments passed by the Hon'ble Supreme Court in following cases :

1 . S.N. Vijayalakshmi & Ors. Vs. State of Karnatka reported in 2025 INSC 917,

2 . Punit Beriwalla Vs. State of NCT of Delhi and Others reported in 2025 SCC OnLine SC 983,

3. Kathyayini Vs.Sidharth P.S. Reddy and Others reported in 2025 SCC OnLine SC 1428, and

4 . C.S. Prasad Vs.C. Satyakumar and Others reported in 2026 SCC OnLine SC 50.

13. It is further submitted that the petitioner has not filed any rejoinder to the detailed reply dated 18.08.2026 filed by Respondent No.2 and has not controverted or explained the facts and documents placed on record therein. The material averments, therefore, remain unrebutted. In particular, paragraph 11 of the reply discloses several circumstances requiring investigation, including the alleged concerted conduct and mens-rea from the inception of the transaction. The petitioner sought Rs.40.80 crores from respondent No.2 towards the projects awarded by the Madhya Pradesh State Mining Corporation, despite its own purported contribution being Rs.122.40 crores and its inability to arrange the requisite funds. Respondent No.2 paid Rs.40.80 crores through its sister concern, M/s Mapex Remedies LLP, which payment was acknowledged by the petitioner in its communication dated 08.05.2021. Against its purported share, the petitioner could arrange only Rs.75.16 crores. After cancellation of the Hoshangabad project, instead of



refunding respondent No.2's funds, the petitioner allegedly diverted part thereof to M/s National Energy Trading and Services Pvt. Ltd., an entity connected with the petitioner, which subsequently participated in the re-tender of the Hoshangabad project. The reply further refers to suppression of material facts from the stock exchanges, premature liquidation of fixed deposits, alleged fraudulent removal of respondent No.2's nominee from operation of joint bank accounts, falsification or non-disclosure of accounts, and induction of a new partner without first satisfying the liability towards respondent No.2. These circumstances, taken cumulatively, cannot be brushed aside as a mere civil dispute and require proper investigation. The EOW may ultimately conclude, upon investigation, that no cognizable offence is made out; however, the petitioner cannot seek an order stifling the investigation before the investigating agency has taken a final view, particularly when the petitioner itself has not cooperated with the investigation.

14. Lastly, it is submitted that the petitioner's reliance upon the failure of respondent No.2 in the arbitral proceedings is fundamentally misconceived. The Arbitral Award dated 06.07.2025 is itself under challenge under Section 34 of the Arbitration and Conciliation Act, 1996. The continuation of criminal proceedings cannot be made dependent upon the outcome of the arbitral proceedings or the proceedings under Section 34. Otherwise, the criminal proceedings would have to fluctuate with every subsequent development in the arbitral proceedings, which is legally impermissible. The civil and criminal proceedings operate in distinct spheres



and are governed by different standards and considerations. He submitted that in view of the aforesaid facts and circumstances, the petitioner has failed to make out any ground for exercise of the extraordinary jurisdiction of this Court. The Writ petition deserves to be dismissed, and the EOW may be directed to complete the investigation expeditiously and strictly in accordance with law.

15. Learned counsel for the petitioner, in reply to the preliminary objections raised by respondent No.2, submits that the allegations of suppression and deliberate concealment are wholly misconceived and have been raised only to divert the Court from the substantive issue involved in the petition. It is submitted that the petitioner has approached this Court bona-fide and has placed on record the relevant documents forming the basis of its challenge, including the communications issued by the EOW and the Arbitral Award.

16. It is further submitted that the complaint was not deliberately withheld with any intention to mislead the Court. The complaint forms part of the ongoing investigation and is not in the possession of the petitioner; any attempt by the petitioner to procure the same may expose him to coercive action by the investigating agency. In any event, the complaint has now been placed on record by respondent No.2 itself as Annexure R-2/1 and its contents are before the Court for consideration. Therefore, no prejudice has been caused to Respondent No.2 and the petition can be effectively adjudicated on merits.

17. With regard to the alleged submission concerning the date of the



complaint, learned counsel submits that the same was at best an inadvertent or bona fide error and cannot be elevated to a finding of deliberate suppression or fraud upon the Court. The petitioner has not derived, nor sought to derive, any undue advantage from the said statement.

18. Similarly, the contention of respondent No.2 that he was initially not served also does not merit acceptance. The service status as reflected in the ERP was “unclaimed” and not “unserved”. Such endorsement, in the facts of the case, cannot be treated as a case of non-service, particularly when the notice had been duly issued and the status was recorded as “unclaimed”. The same would, therefore, be liable to be treated as deemed service. Moreover, respondent No.2 has subsequently entered appearance, filed a detailed reply and has been afforded full opportunity of hearing. It is also significant that respondent No.2 was aware that the matter had earlier been heard and reserved for orders, which itself indicates that he was monitoring the proceedings. In these circumstances, his subsequent objection regarding want of service, particularly after having knowledge of the proceedings, cannot be permitted to be used to allege any prejudice or deliberate suppression on the part of the petitioner. On the contrary, the circumstances raise a serious question as to whether respondent No.2 had consciously avoided service and thereafter sought to take advantage of such avoidance. Such conduct cannot be permitted to be used as a ground to cast aspersions upon the petitioner or to allege that the Court proceedings were conducted without affording respondent No.2 an opportunity of hearing.

19. It is further submitted that the absence of a rejoinder cannot



amount to an admission of each and every factual assertion made in the reply of respondent No.2. The petitioner is entitled to rely upon the pleadings and documents already forming part of the record, and questions relating to disputed facts cannot be determined merely on the basis of an alleged deemed admission.

20. Learned counsel further submits that the objection that the petition is premature is equally untenable. The petitioner is aggrieved by the continuing action of the EOW pursuant to the complaint and the repeated notices issued to it. The fact that an FIR has not yet been registered does not take away the jurisdiction of this Court under Article 226 of the Constitution where the continuation of the proposed criminal process itself is alleged to be an abuse of law. The petitioner is not seeking adjudication of disputed questions of fact but seeks protection from being subjected to a criminal investigation in respect of a dispute which is essentially contractual in nature and has already been adjudicated in arbitral proceedings.

21. It is, therefore, submitted that the preliminary objections raised by respondent No.2 do not furnish any ground for dismissal of the petition and the matter may be examined on its substantive merits.

22. Heard learned counsel for the parties and perused the material placed before this Court.

23. Before examining the matter on merits, it is necessary to deal with the preliminary objections raised by learned counsel for respondent No.2. It has been contended that the petitioner has suppressed material facts, particularly by not placing the complaint on record along with the petition,



by not mentioning its date in the List of Dates, by allegedly making an incorrect submission regarding the date of filing of the complaint and by not bringing to the notice of the Court that respondent No.2 had remained unserved when the matter was heard. It has also been urged that no rejoinder was filed to the reply of respondent No.2 and, therefore, the averments contained therein should be treated as admitted.

24. The aforesaid objections have been duly considered. It is undoubtedly true that a party invoking the extraordinary jurisdiction of this Court is expected to make a full and candid disclosure of all material facts and that suppression of a material fact having a direct bearing on the adjudication may disentitle a litigant from obtaining discretionary relief. The principle laid down by the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu (supra)*, in this regard, admits of no dispute. However, the question whether an omission or an erroneous statement is of such a nature as to disentitle a party from relief has to be examined in the factual context of each case. Every omission or procedural deficiency cannot, irrespective of its relevance to the ultimate controversy, be treated as suppression of such magnitude as to non-suit a litigant.

25. In the present case, the complaint has subsequently been placed before this Court by respondent No.2 itself as Annexure R-2/1. It is the specific stand of the petitioner that the said complaint forms part of the ongoing investigation and was not in his possession and, therefore, he could not have annexed the same with the petition. It has further been submitted that any attempt on the part of the petitioner to procure the complaint from



the investigating agency could have exposed him to coercive action, and therefore, non-production of the complaint at the initial stage cannot, by itself, be treated as a deliberate withholding of a material document. Be that as it may, the foundational document is now before the Court and its contents, including the date of the complaint, i.e. 09.11.2022, have been examined. In these circumstances, the objection regarding its non-production at the initial stage does not, by itself, furnish sufficient ground to non-suit the petitioner, particularly when the document has subsequently been brought on record by respondent No.2 itself and the Court has had full opportunity to examine the same while deciding the present petition..

26. As regards the submission allegedly made on 15.05.2026 that the complaint was filed after the Arbitral Award dated 06.07.2025, the Court finds that the dates themselves make the submission factually incorrect. The complaint admittedly bears the date 09.11.2022, whereas the Arbitral Award was passed on 06.07.2025. However, an erroneous statement regarding the chronology, by itself, cannot be treated as conclusive proof of a deliberate design to mislead the Court unless the surrounding circumstances establish that the statement was consciously and materially intended to secure an otherwise unavailable relief.

27. In the present case, the substantive controversy can be decided on the complaint and the undisputed contractual and arbitral record now available before the Court. The Court, therefore, does not consider it necessary to non-suit the petitioner solely on this ground.

28. The objection regarding non-service of respondent No.2 also does



not persuade this Court to dismiss the petition. The record maintained in the ERP reflects the status of the notice as “unclaimed”. Thus, the mere assertion that respondent No.2 was not served cannot, in the facts of the present case, be accepted as a circumstance demonstrating denial of opportunity of hearing. More importantly, respondent No.2 was evidently aware of the pendency of the proceedings and, despite such knowledge, has chosen to raise the objection of non-service at a subsequent stage. The fact that respondent No.2 was aware that the matter had already been heard and reserved for orders also assumes significance, as such knowledge could reasonably arise only from his continued awareness of the proceedings. In these circumstances, the possibility of respondent No.2 having consciously avoided service and thereafter seeking to derive an advantage from such avoidance cannot be overlooked. In any event, respondent No.2 has subsequently entered appearance, filed a detailed reply, placed the complaint and other documents on record, and has been afforded full opportunity to address the Court both on the preliminary objections as well as on the merits. No actual prejudice has, therefore, been demonstrated. The objection based upon alleged non-service, particularly when the record reflects “unclaimed” status and the respondent has subsequently availed a full and effective opportunity of hearing, cannot constitute a ground for dismissal of the petition.

29. The submission that the absence of a rejoinder amounts to a deemed admission also cannot be accepted in the absolute terms suggested. The absence of a rejoinder may, in an appropriate case, render specific



factual assertions unrebutted; however, it does not dispense with the duty of the Court to independently examine whether the material facts, even if taken as pleaded, satisfy the legal ingredients of the offences alleged. A criminal proceeding cannot be sustained merely because a particular factual assertion in a reply has not been traversed by way of rejoinder. The Court must ultimately determine whether the continuation of the criminal process is justified in law.

30. It has further been contended that the petition is premature since the EOW has neither registered an FIR nor completed its inquiry. The objection, in the opinion of this Court, is also without substance in the facts of the present case. The jurisdiction of this Court under Article 226 is not dependent upon the formal registration of an FIR in every case. Where the foundational complaint itself is under challenge and the material placed before the Court is sufficient to demonstrate that the dispute is essentially contractual and that the allegations do not disclose the basic ingredients of the offences alleged, the Court is not powerless to prevent continuation of an investigation which, on the material before it, would amount to an abuse of the process of law. At the same time, this Court is conscious that an investigation ordinarily ought not to be interdicted at its inception merely because the accused disputes the allegations. The power of judicial review is to be exercised sparingly. However, the present case stands on a different footing. The parties were admittedly bound by a commercial arrangement; the disputes arising therefrom were subjected to arbitration; both sides participated in the arbitral proceedings; the claims and counter-claims were



adjudicated upon; and the criminal allegations essentially arise from the same contractual and financial transactions. Therefore, the question before this Court is not merely whether the EOW should be permitted to investigate a disputed factual allegation, but whether the allegations, taken at their face value, disclose the ingredients of a criminal offence at all.

31. Accordingly, while the Court does not approve of any inaccurate statement or omission of a material fact before this court, it is not inclined, in the peculiar facts of the present case, to dismiss the petition solely on the preliminary objections raised by respondent No.2. The objections are, therefore, rejected, and the Court proceeds to examine the sustainability of the criminal proceedings on their substantive merits.

32. The principal question which arises for consideration is whether, in the facts and circumstances of the present case, continuation of the proceedings arising out of Complaint No.414/2022 before the Economic Offences Wing, Bhopal, would amount to an abuse of the process of law, notwithstanding the fact that the dispute between the parties has its genesis in a commercial arrangement and has already been subjected to adjudication in arbitral proceedings.

33. At the outset, this Court is conscious of the settled principle that the mere existence of a civil remedy, or even the pendency of civil proceedings, does not constitute an absolute bar to criminal proceedings. It is equally well settled that the same transaction may, in a given case, give rise to both civil and criminal consequences. However, the converse proposition is equally important: the mere use of expressions such as "fraud", "cheating",



"criminal breach of trust" or "diversion of funds" in a complaint cannot, by itself, convert a purely contractual dispute into a criminal offence. The Court is required to examine whether, accepting the allegations at their face value and without embarking upon a mini-trial, the basic ingredients of the alleged criminal offences are disclosed. The Hon'ble Supreme Court, in the case of *G. Saminathan and Another Vs. State, Represented by the Sub-Inspector of Police and Another*, reported in *2026 SCC OnLine SC 1460*, has held as under :

"8.1. In this regard, we find it apposite to refer to this Court's decision in *Binod Kumar v. State of Bihar*, (2014) 10 SCC 663 : (2015) 1 SCC (Cri) 203 wherein it considered a criminal complaint arising out of retention of bill amount in the course of a commercial transaction and found that the essential ingredients of criminal breach of trust or dishonest intention of inducement, which formed the foundation of the complaint missing. The relevant portion of the judgment reads as follows:

"18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust."



(underlining by us)

8.2. On a prima facie view of the allegations contained in the FIR and the chargesheet, it appears that the complainant has attempted to hold the accused persons criminally liable for breach of a contract. This court in *Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168 : 2000 SCC (Cri) 786, held that a mere breach of contract cannot give rise to criminal prosecution unless a fraudulent and dishonest intention of the accused is proved from the very inception of the transaction. The relevant portion of the judgment reads as follows:

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

8.3. The aforesaid dictum was reiterated by this Court in the case of *Dalip Kaur v. Jagnar Singh*, (2009) 14 SCC 696 : (2010) 2 SCC (Cri) 223, wherein it was held as under:

“10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition



contained in Section 405 of the Penal Code.”
(underlining by us)

8.4. It is trite law that for establishing the offence of cheating, the complainant was required to show that the accused had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the joint development agreement. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts.....”

34. In the present case, the admitted factual foundation of the dispute is the Memorandum of Understanding dated 25.01.2020 and the subsequent arrangements between the parties concerning their respective financial obligations in relation to the sand mining projects awarded by the Madhya Pradesh State Mining Corporation. The dispute essentially concerns the extent of financial contribution required to be made by the parties, the amounts allegedly contributed, utilisation and adjustment of such amounts, the liability to refund or account for the same and the consequences flowing from the cancellation of one of the projects. These very matters constituted the subject matter of the arbitral proceedings initiated by respondent No.2.

35. It is significant that the parties participated in the arbitral proceedings, produced their respective pleadings and documents and led evidence. The learned Sole Arbitrator thereafter passed a reasoned Award dated 06.07.2025, whereby the claims of respondent No.2 as well as the counter-claims of the petitioner came to be dismissed. The Award is admittedly under challenge under Section 34 of the Arbitration and Conciliation Act, 1996. The pendency of the Section 34 proceedings, by itself, does not determine the criminal proceedings; nevertheless, the fact that



the entire underlying commercial dispute has already been subjected to adjudication by the agreed forum is a relevant circumstance while examining whether the criminal process is being invoked to adjudicate what is essentially a contractual dispute.

36. The Court has also considered the complaint which has now been placed on record by respondent No.2. The mere fact that the complaint was lodged on 09.11.2022, i.e. prior to the Arbitral Award dated 06.07.2025, does not alter the nature of the controversy. More importantly, the allegations contained therein, even when taken at their face value, principally arise out of the obligations undertaken by the parties under the MoU and the connected commercial arrangements. The allegations regarding non-contribution of the agreed amount, utilisation of the funds, refund or adjustment of the amount allegedly advanced, operation of accounts, induction of another participant and the subsequent handling of the project are matters substantially intertwined with the contractual relationship and the accounts between the parties.

37. The allegation that the petitioner did not possess sufficient financial capacity to contribute its agreed share and nevertheless obtained contribution from respondent No.2 also requires the existence of material showing that, at the inception of the transaction, the petitioner had a dishonest or fraudulent intention and induced respondent No.2 to part with its money by such deception. A subsequent failure to perform a contractual obligation, inability to arrange the promised contribution, or failure to refund or account for an amount does not, without more, constitute the offence of



cheating. Likewise, a dispute as to the manner in which money entrusted or advanced pursuant to a commercial arrangement was subsequently dealt with cannot automatically constitute criminal breach of trust unless the foundational ingredients of entrustment and dishonest misappropriation are disclosed.

38. In the present case, this Court does not find sufficient material to establish the requisite criminal intent at the inception of the transaction. The subsequent conduct alleged by respondent No.2 may give rise to a claim for rendition of accounts, recovery, damages or other contractual consequences, but the same cannot, in the absence of the essential ingredients of the penal offences, be permitted to acquire a criminal complexion merely because the complainant has employed allegations of fraud or diversion of funds.

39. The reliance placed by learned counsel for respondent No.2 upon the proposition that civil and criminal proceedings can simultaneously continue does not admit of any quarrel. The judgments relied upon, including *S.N. Vijayalakshmi (supra)*, *Punit Beriwalla (supra)*, *Kathyayini (supra)* and *C.S. Prasad (supra)*, lay down the principle that pendency or availability of a civil remedy does not, by itself, furnish a ground for quashing criminal proceedings where the allegations and material independently disclose the commission of a criminal offence. Those decisions, therefore, do not advance the case of respondent No.2 in the facts presently before this Court. The distinction is material. This is not a case where the Court is quashing criminal proceedings merely because an arbitral or civil proceeding is pending. Rather, this Court has examined the nature of the allegations and finds that



the substratum of the dispute remains contractual and that the material placed before the Court does not disclose the requisite ingredients of the alleged criminal offences. The principle that civil and criminal remedies may coexist cannot be stretched to mean that every breach of a commercial agreement, every dispute concerning accounts or every failure to fulfil a contractual obligation must necessarily be subjected to criminal investigation.

40. In *S.N. Vijayalakshmi (supra)*, the Hon'ble Supreme Court itself examined whether the factual allegations disclosed the ingredients of the offences alleged and held that where the necessary criminal ingredients were absent, permitting the criminal proceedings to continue would amount to an abuse of the process of law. The decision, therefore, cannot be read as laying down an absolute rule that whenever a transaction has a civil character, criminal proceedings must necessarily continue. The relevant consideration remains whether the factual foundation discloses criminality. Likewise, the judgments passed in the case of *Punit Beriwal (supra)*, *Kathyayini (supra)* and *C.S. Prasad (supra)* do not lay down that the High Court is powerless to intervene where the allegations, even if accepted in their entirety, fail to constitute a criminal offence. Those decisions caution the Court against conducting a detailed appreciation of evidence or determining disputed questions of fact at the threshold. This Court has undertaken no such exercise. The conclusion reached herein is based upon the nature of the transaction, the admitted contractual framework, the subject matter of the arbitral proceedings and the absence of the foundational ingredients necessary to constitute the alleged criminal offences. The Court is not



recording a finding upon the correctness of the accounts or upon the ultimate civil liability of either party.

41. The contention that the Arbitral Award cannot have any bearing upon the criminal proceedings also requires some qualification. Certainly, an Arbitral Award cannot operate as an automatic bar to criminal prosecution. However, where the very dispute forming the foundation of the complaint concerns contractual rights and liabilities which have been placed before the agreed adjudicatory forum, the outcome of such proceedings and the nature of the findings recorded therein constitute relevant circumstances for determining whether the subsequent or parallel invocation of criminal law discloses genuine criminality or is merely an attempt to give a criminal colour to a commercial dispute. The Court is not treating the Award as an adjudication of criminal liability; it is considering it only as part of the overall factual matrix. In this context, the Hon'ble Supreme Court in the case of *G. Saminathan (supra)* has noted that the parties had invoked arbitration, an Arbitral Award had been passed, and the award was under challenge under Section 34. In those circumstances, where the dispute was essentially civil and the criminal allegations did not disclose independent criminality, continuation of the criminal proceedings was held to be an abuse of process. The relevant para is quoted hereinunder :

"9. We have given our careful consideration to the submissions advanced by the learned counsel for the respective parties as well as the material placed on record and analysed the same. In our view, the complainant in the present case has sought to give a criminal colour to a purely civil dispute. We must also hasten to add that the accused, in terms of the joint development agreement, has already invoked the arbitration clause, and an arbitral award



dated 12.04.2023 has already been passed by the learned arbitrator determining the liabilities of both parties in terms of their contractual obligations. Moreover, the said award has been challenged under Section 34 of the Arbitration Act by the complainant. Thus, while the parties in the present case are also pursuing their civil remedies, we find that it will be in complete disregard of the criminal justice system to permit the continuation of criminal prosecution against the accused herein for the offences under Section 406 and 420 of IPC. This aspect of the matter has not been noticed by the High Court."

42. The objection raised by respondent No.2 regarding non-production of the complaint along with the writ petition, the alleged incorrect statement regarding the date of the complaint and the absence of a rejoinder has also been considered. These circumstances may be relevant while examining the conduct of a litigant seeking discretionary relief; however, procedural or pleading-related deficiencies cannot, by themselves, compel the Court to permit continuation of criminal proceedings where the substantive allegations do not disclose the commission of a cognizable criminal offence. The ultimate question remains whether the criminal process is legally sustainable.

43. The fact that the EOW has not yet registered an FIR and is conducting an inquiry also does not render the petition wholly premature. The extraordinary jurisdiction of this Court is not confined to cases where an FIR has already been registered. Where the very foundation of the proposed criminal action is brought before the Court and the allegations, even if accepted at their face value, do not disclose the commission of a criminal offence, the Court would be justified in preventing the criminal process from being carried further. The power is to be exercised sparingly and with



circumspection, but it is equally intended to prevent abuse of the process of law.

44. In the present case, permitting the EOW inquiry to continue merely because the complaint uses allegations of fraud and diversion of funds, in circumstances where the underlying dispute is contractual and the essential ingredients of the alleged offences are not disclosed, would amount to permitting the criminal process to be utilised as a means of exerting pressure in a commercial dispute. The distinction between a genuine criminal offence arising out of a commercial transaction and a purely commercial dispute sought to be clothed with criminal allegations must be maintained. The Hon'ble Supreme Court in the case of *Indian Oil Corporation (supra)*, has held as under :

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High



Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

Consequently, this Court is of the considered view that the present case falls within the well-recognised parameters warranting interference in exercise of the extraordinary jurisdiction of this Court. The continuation of the proceedings before the EOW, on the facts presently available, would serve no legitimate criminal-law purpose and would amount to an abuse of the process of law.”

45. Accordingly, the present Writ Petition is **allowed**. The Complaint No.414/2022 lodged before the Economic Offences Wing, Bhopal, and all consequential proceedings/inquiry arising therefrom against the petitioner are, hereby, **quashed**.

46. It is, however, made clear that this Court has expressed no opinion upon any civil or contractual rights or liabilities of the parties, nor shall this order prejudice the proceedings pending under Section 34 of the Arbitration and Conciliation Act, 1996, or any other remedy available to either party in accordance with law.

47. With the aforesaid observations, the Writ Petition stands allowed and disposed of.

48. All pending interlocutory applications, if any, shall stand disposed of.

(HIMANSHU JOSHI)
JUDGE

Prachi