

17.06.2026
Sl. No.4
Ct. No.237
S.A.

**CRR 2984 of 2025
With
CRAN 2 of 2026**

**Shambhunath Jajodia & Anr.
-vs-
M/s. Fashion Creation**

Ms. Sutapa Sanyal
Mr. Debrup Bhattacharjee
Mr. Pradeep Kumar Tulsyan
Mr. Tirthankar Dey

...for the petitioners

By filing the present application, the petitioners seek quashing of the proceedings arising out of Complaint Case No. CN/510/2023, presently pending before the Learned Metropolitan Magistrate, 5th Court, Calcutta, under Sections 420, 422, 506, and 120B of the Indian Penal Code.

A plain reading of the complaint reveals that the gravamen of the allegations against the petitioners pertains to the non-payment of a sum of Rs. 1,14,552/- (Rupees One Lakh Fourteen Thousand Five Hundred and Fifty-Two Only) allegedly due under Invoice No. FCR-00157 dated July 20, 2019.

Ms. Sutapa Sanyal, learned Advocate appearing on behalf of the petitioners, submits that the dispute between the parties is purely civil in nature. According to her, the parties had maintained a long-standing business relationship, and all financial transactions between them were conducted without any formal written agreement.

Referring to the statement of accounts appearing at pages 22 to 36 of the present revisional application, learned counsel submits

that even after the issuance of the aforesaid invoice dated July 20, 2019, the petitioners made a payment of Rs. 1,59,188/- (Rupees One Lakh Fifty-Nine Thousand One Hundred and Eighty-Eight Only) to the opposite party on November 15, 2019.

It is further submitted that GSA Retail Limited, a company in which both petitioners served as Directors, is presently undergoing proceedings under the Insolvency and Bankruptcy Code, 2016. By an order dated June 7, 2022, the National Company Law Tribunal appointed an Interim Resolution Professional to ascertain the claims of creditors and to convene a Committee of Creditors for the purpose of formulating a resolution plan. Learned counsel contends that the present complaint was instituted subsequent to the said order of the Tribunal and that, in view of the commencement of the insolvency resolution process, the complaint was not maintainable before the Learned Magistrate.

Despite service of notice, no one appears on behalf of the opposite party.

Let the affidavit of service filed on behalf of the petitioners be taken on record.

I find that the Learned Magistrate in the court below had called for a report from the concerned police station in connection with the complaint lodged by the opposite party. Pursuant thereto, the police submitted a report. The relevant portion of the said report is reproduced below:

“During enquiry the opposite party stated that at present they are no more directors of the said company as the company has gone for the liquidation as THE NATIONAL COMPANY LAW TRIBUNAL, KOLKATA BENCH had initiated the Corporate Insolvency Resolution Process in respect of G.S.A. Retail Ltd., a corporate entity having

its Registered Office at 116F, B.T. Road, NTC Compound, Kamarhati, Kolkata-700058, West Bengal (vide CP(IB) No.51/KB/2021 and CIN: U17120WB2007PLC115417). Mr. Vishnu Kumar Tulsyan, registered with Insolvency and Bankruptcy Board of India, having Registration No. [Reg. No. IBBI/IPA-001/IP-P01428/2019-2020/12525] Email Id: tulsyanvk@gmail.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan under the order of THE NATIONAL COMPANY LAW TRIBUNAL, KOLKATA BENCH. The copy of order No.NCLT/KB/2022/3067 is attached herewith.

During enquiry the opposite party accepted regarding the dues of Rs.1,14,552/- (vide Invoice Bill No. FCR-00157, dated 20.07.2019). The opposite party have communicated to the petitioner in reply through letter dated 30.06.2022 (via speed post) addressing to Dibyendu Ghosh (Advocate), City Civil Court Bar Association, 2 & 3, K. S. Roy Road, 2nd Floor, Kolkata-700001, that GSA Retail Limited have been admitted in Hon'ble NCLT Court under IBC Rules, 2016 and Sri Vishnu Kumar Tulsyan has been appointed as Interim Resolution Professional (IRP). The copy of said letter is attached herewith.

During enquiry the opposite party produced a copy of email which reflects that the petitioner company i.e. Fashion Creation is already enrolled under the list of creditors as on 05.09.2023 and their claim has been received under Regulation 12(2) of IBBI (Insolvency Resolution for Corporate persons) Regulation, 2016. The amount of claim received Rs.1,90,478/- and amount of claim admitted is Rs.1,89,757/- of Fashion Creation and the copy of email is attached herewith.

Hence, it has been ascertained that the dispute is purely related to the recovery of business dues of company and the matter is purely CIVIL IN NATURE.

This is for your Honour kind perusal and necessary order.”

Upon a careful perusal of the complaint and the police report, this Court is of the considered view that the dispute between the parties is essentially civil in nature and cannot be permitted to assume the character of a criminal proceeding. The fundamental ingredients constituting the alleged offences under Sections 420, 422, 506, and 120B of the Indian Penal Code are conspicuously absent in the facts and circumstances of the present case.

This view finds support from the principles laid down by the Hon'ble Supreme Court reported at **(2011) 13 SCC 412 (*Thermax Limited v. K.M. Johnny*)**, **(2009) 3 SCC 78 (*V.Y. Jose v. State of Gujarat*)** and **(2022) 7 SCC 124 (*Vijay Kumar Ghai v. State of West Bengal*)**.

Having regard to the nature of the transactions between the parties and the materials placed on record, this Court is satisfied that the dispute arises out of a commercial transaction. There is nothing on record to indicate that the petitioners had any fraudulent or dishonest intention to deceive the opposite party from the very inception of the transaction. In the absence of such mens rea, the offence of cheating cannot be said to be made out.

In view of the foregoing discussion, the proceedings arising out of Complaint Case No. CN/510/2023, pending before the Learned Metropolitan Magistrate, 5th Court, Calcutta, under Sections 420, 422, 506, and 120B of the Indian Penal Code, are hereby quashed.

Accordingly, **CRR 2984 of 2025** is allowed and **CRAN 2 of 2026** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)