

Shantibhushan Vs. M/s Shivam
IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS
20TH COURT, MAZGAON, MUMBAI

C.C. No. 2060/SC/2023
ORDER BELOW APPLICATION EXH.16

Read. Heard. Perused the record.

The points for determination along-with my findings are as under....

Sr. No.	Points	Findings
1	Has the complainant made out prima facie case ?	Not at this stage.
2	Has the accused placed on record prima facie defence ? If yes, where is it pleaded and plausible ?	Yes. In reply and production of document.
3	What are the relevant factors pertaining to this claim ?	The bank statements disclosing payments.
4	Is the complainant entitled for interim compensation? If yes, What should be the quantum ?	Not at this stage.

REASONS

AS TO POINT NOS. 1 TO 4 :-

2 According to the accused, the complainant has concealed material facts. Enforceable liability has not been proved. The nature of business of the complainant i.e. Pan shop would make it difficult for him to lend such hand loan. In fact, the complainant has invested in chit funds and towards the same Rs.2,30,000/- was repaid by the accused. The ^{contents}~~contents~~ on the cheque have been altered. The accused has a good defence. He is a retired person and dependent on his children. The relief is discretionary. Hence, the application being frivolous is required to be rejected. Reliance is placed upon the case laws **Rakesh Ranjan**



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Shrivastava Vs. The State of Jharkhand And Anr, Criminal Appeal No.741/2024, **Sri Dattatraya Vs. Sharanappa**, Criminal Appeal No.3257/2024, **Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr**, 2022 Live Law (SC) 830.

3 The complainant has filed supporting affidavit. He has relied upon the subject cheque, its dishonour memo, the demand notice and service proof. The complainant has pleaded that the drawer of the cheque is the accused. The complainant has further pleaded that the cheque is handed over to him to satisfy liability of the friendly loan Rs.12 lakhs by the accused.

4 Upon his appearance, the accused has filed applications Exhs.13, 14 seeking cancellation of warrant and bail. Wherein, no defence or actual circumstances are disclosed with regard to the transaction and the subject cheque. The accused has filed copies of the complainant's bank account statements for the period of 01.10.2021 to 28.02.2022. Relying upon the same, it is contended that the accused has paid Rs.3,30,000/- to the complainant. In a sense, the accused has not disputed having entered into certain transaction with the complainant. The accused thus has disclosed his part of defence by way of production of said document. Against this, the complaint, the demand notice do not narrate and explain requisite details of advancement of the friendly loan such as exact or approximate day, date. The only specification is given that the complainant agreed to advance said loan amount in two installments in year 2022 in cash. Hence, unless the version of the



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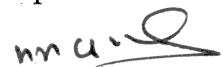
complainant is testified during cross-examination and in course of further trial, his claim at this prima facie stage is not sustainable. To counter this, the complainant has contended that the accused failed to justify his act of issuance of the cheque and his persistent failure to participate in the trial at the initial stage. The complainant has further contended that the bank account statements do not reflect true picture since those entries are not related to the present case. In doing so, the complainant has not put forth his part as to why said sum Rs.3,30,000/- is deposited in his bank account and against which transaction.

5 Therefore, the accused has prima facie succeeded to place on record relevant evidence. The complainant has failed to counter the same at this prima facie stage. As a result, point nos.1 and 2 are required to be considered after, atleast cross-examination of the complainant. Consequently, at this stage, the complainant has failed to establish prima facie case since the accused is able to disclose probable defence. These points are answered accordingly with following order.

ORDER

1 The prayer with regard to interim compensation is not considered at this stage. Hence, is rejected.

2 The complainant is placed at liberty to the complainant to satisfy about said prayer in course of further trial, as per law.



(V.B. Gulve-Patil)

Date : 16.10.2025

Judicial Magistrate First Class,
20th Court, Mazgaon, Mumbai.