

Order below Exh. No. 25

Complainant has filed this application for the interim compensation equal to 20% of the amount of the cheque under Section 143- A of the Negotiable Instruments Act.

2. Perused application and say at Exh. 32. Heard learned advocates on behalf of the parties.

3. Present compliant is filed for the offence punishable under Section 138 of the Negotiable Instruments Act. Complainant has alleged that, cheque dated 22/07/2019 for Rs. 6,70,000/- issued by the accused is dishonoured on 18/09/2019. Plea is recorded at Exh. 24. The accused has not pleaded guilty. Section 143-A of said Act provides that, the Court trying the aforesaid offence may order the drawer of the cheque to pay interim compensation to complainant in a summary trial or summons case where he pleads not guilty and such interim compensation shall not exceed 20% of the amount of the cheque.

4. The accused has opposed this application on the ground that, he is not liable to pay the alleged amount, he has issued said cheque for security. However, the aforesaid provision does not have the scope to consider such objection while determining the issue of interim compensation. It is only requisite to consider that, the accused has not pleaded guilty. As such the accused has pleaded not guilty, this provision can be invoked.

5. Admittedly, said cheque is drawn by accused in favour of complainant. It is not disputed that, accused and complainant were

doing the business of sale and purchase of ginger. It is not the defence of accused that, he has drawn blank cheque. The accused has not stated that, for which security he has drawn the cheque in favour of complainant. On perusal of said cheque it prima facie appears that, the accused has issued cheque of Rs. 6,70,000/- to complainant. In view of Section 139 of the Negotiable Instruments Act it shall be presumed that, there was a transaction between both and under the obligation of said transaction, the accused has issued aforesaid cheque to complainant. In view of Section 118 of the said Act, it shall be presumed that, said cheque was drawn for consideration and the complainant is a holder of said cheque in due course. Thus, I hold that, the complainant is entitled for compensation from the accused.

6. No doubt, this provision is not mandatory to exercise. It is the discretion of the Court either to grant or reject the prayer of interim compensation. In aforesaid circumstances, I find it is just and reasonable to grant the compensation to complainant.

7. The aforesaid provision says that, the interim compensation shall not exceed 20% of the amount of the cheque. Hence, it is not mandatory to grant the exact 20% of the amount of the cheque. The Court can grant interim compensation less than 20% of the amount of the cheque. In the case in hand, considering the quantum of amount, I am inclined to grant interim compensation equal to 5% of the amount of the cheque.

8. Accordingly, for aforesaid reasons present application deserves to be partly allowed. Hence, I proceed to pass following

order :

ORDER

1. Application is partly allowed.
2. The accused do pay interim compensation equivalent to 5% of the amount of the cheque in question to complainant within 60 days.
3. In case the accused is acquitted, the complainant shall repay the aforesaid amount with interest at the bank rate as published by the R.B.I. prevalent at the beginning of the relevant financial year within 60 days from the date of acquittal.
4. The aforesaid interim compensation may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973.
5. In case the accused is convicted, the amount of fine or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure will be reduced by the amount paid or recovered as interim compensation.
6. No order as to costs.

(G.S.Mane)

Date : 05/12/2022.

Judicial Magistrate F.C. Koregaon.