

MHST160031602018 	<u>Order Below Exh.36 in S.C.C.No.2621/2018.</u> <u>(Shri.Pramod Shankar Chorge</u> <u>V/s.</u> <u>Shrikrushna Dairy Firm Through</u> <u>Shri.Atul Chandrakant Pawar)</u> (Passed on 18.06.2024)
---	---

This is an application filed by the complainant for claiming interim compensation from accused under section 143-A of Negotiable Instruments Act 1881.

2. Complainant submitted that he is resident of Gangapuri Wai. There was agreement between complainant and accused. Said agreement for giving milk to accused by complainant. The rate of milk is of Rs.25/- per litre. Accused gave assurance to complainant that consideration amount for said milk will be deposited to the account of complainant or they will give cash to him. Complainant believed on accused and accepted the agreement.

3. According to complainant he gave milk to dairy of accused from 08.03.2018. From 08-03-2018 to 30.04.2018 due amount from accused is of Rs.11,39,398/-. Accused gave Rs.1,00,000/- on 22.04.2018 through cheque. Similarly, accused gave amount of Rs.3,75,000/- on 03.05.2018 and Rs.20,000/- on 06.05.2018. Accused gave in total Rs.4,95,000/- to complainant.

Till 30.04.2018 due amount from accused to complainant is of Rs.6,44,398/-.

4. Complainant further submitted that there was notarized agreement between him and accused dated 25.05.2018. After morning of 01.06.2018, accused did not provide milk to complainant. It is alleged by complainant that Rs.6,21,543/- amount is due for period of 01.05.2018 to 01.06.2018 and Rs.6,44,398/- is due amount as mentioned above. In total due amount of Rs.12,65,941/-. Accused gave Rs.2,00,000/- on 17.05.2018 and Rs.2,02,941/- on 03.07.2018. Hence due amount is of Rs.8,63,000/-. Accused gave cheque of Rs.5,00,000/- to complainant. Complainant has filed this case as the cheque of amount of Rs.3,63,000/- is dishonored. Hence, he prayed for 20% of the amount of cheque.

5. Accused have filed say at exh.44. They submitted that, it was not decided between them that amount be given by cheque to complainant. Accused provide milk to complainant since evening of 08.03.2018 to 30.04.2018. Due amount of Rs.7,96,124/-. After 06.05.2018 accused were liable for due amount of Rs.3,01,124/-. Accused did not provide milk to complainant for the period 01.05.2018 to 01.06.2018. Hence, they are not liable to pay Rs. 6,21,543/- to complainant. Accused gave Rs. 2,00,000/- to complainant on 14.08.2018. Documents regarding it are filed at exh.35. Hence, the due amount is of Rs.44,398/-. Therefore the application deserves to be rejected.

6. Ld. Advocate of Complainant submitted that according to section 143-A of The Negotiable Instruments Act 1881, he is entitled for 20% amount of cheque from the accused.

7. Per contra learned advocate of accused contended that the complainant did not produced any document regarding transactions in May – June. Similarly when the amount is due then nobody can give milk to the person who did not give money.

8. Ld. Advocate of Accused relied on following authority -
Rakesh Ranjan Shrivastava Vs The State of Jharkhand & Anr.
Criminal Appeal No.741 of 2024.

I have gone through the case. Hon'ble Court observed that Court concludes that a case is made out for grant of interim compensation, the Court will have to apply its mind to the quantum of interim compensation to be granted. Even at this stage, the Court will have to consider various factors such as the nature of the transactions, the relationship, if any, between the accused and the complainant and the paying capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the Court may exercise discretion in refusing to grant interim compensation.

9. It is seen that section 143-A of The Negotiable Instruments Act 1881 provides that court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

in a summary trial or a summons case, where he pleads not guilty.

10. It is seen that the case is kept for the stage of further evidence of complainant. Accused does not plead guilty. The agreement on which complainant is relied on record. But is seen that accused gave Rs.2,00,000/- to complainant on 14.08.2018. The entry regarding it is at exh.35/2. Therefore, it would not proper to give directions to the accused for depositing 20% amount of cheque as interim compensation.

11. Considering the above discussion, this court can not grant interim compensation up to 20% of the amount of cheque. Hence, I pass following order:

ORDER

The application is rejected.

Date : 18.06.2024

(S. S. Kulkarni)

Place : Wai

Judicial Magistrate First Class, Wai