

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITIOIN NO.81 OF 2016

Shaikh Burhan s/o. Shaikh Jainu ..Petitioner

Versus

The State of Maharashtra
and anr. ..Respondents

--

Mr.D.M.Shinde, advocate for petitioner

Mr.R.B.Bagul, APP for respondent no.1 - State

--

CORAM : M.T. JOSHI, J.
DATE : JANUARY 22, 2016

PER COURT :

Heard both sides.

2] Mr.Shinde, learned counsel for the petitioner, submits that the orders passed by learned Judicial Magistrate F.C. as well as learned Addl. Sessions Judge, rejecting the application filed by the present petitioner for recalling of the process in the proceedings under Section 138 of the Negotiable Instruments Act, are bad in law. He further submits that during the course of the

arguments, the learned Addl. Sessions Judge has wrongly recorded the submissions made by learned counsel for the petitioner before him, that in fact, a handloan was taken and it was, however, repaid to the father of the complainant and therefore, the cheque alleged to have been issued by the petitioner was not towards the legally enforceable liability. He submits that no such submissions were made before the learned Addl. Sessions Judge.

3] Upon hearing both sides and perusal of the record, in my view, the orders of learned Judicial Magistrate F.C. or learned Addl. Sessions Judge, cannot be called as perverse. However, the submissions made by learned counsel for the petitioner before the learned Addl. Sessions Judge appear to have been made as alternative submissions. Those would not amount to any admissions.

4] In the circumstances, while deciding the proceedings on merit, the concerned court shall not be influenced by the said statements recorded in the order of the learned Addl. Sessions Judge.

5] With these direction, present Criminal Writ Petition is hereby disposed of.

[M.T. JOSHI, J.]

kbp