

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5731 OF 2019

Mighty Constructions Pvt. Ltd and others.] Petitioners
Vs.
Dharmil Dilip Shah and another.] Respondents

.....

Mr. Vijay D. Upadhyay, for the Petitioners.

Ms. S.M. Munj a/w Mr. Jatin P. Shah, for Respondent No.1.

Mrs. Veera Shinde, A.P.P for the Respondent No.2- State.

.....

CORAM : REVATI MOHITE DERE, J.

DATE : 2nd DECEMBER, 2019.

P.C. :

Heard learned Counsel for the parties.

2. By this Petition, the petitioners have impugned the order dated 30th September, 2019 passed by the learned Sessions Judge in Criminal Revision Application No.355 of 2019 and the order dated 1st July, 2019 passed by the learned Metropolitan Magistrate 20th Court, Mazgaon (Sewree), Mumbai in C.C. No.497/SS/2016.

3. Perused the papers. The principal grievance of the petitioners is that an affidavit in lieu of examination-in-chief was not filed by the complainant/respondent No.1 in the proper format i.e in accordance with Rule- 5 (1) (2) of Chapter VII of the Criminal Manual and as such the same be returned to the complainant/respondent No.1. Learned Counsel for the petitioners submits that the complainant i.e respondent No.1 had not filed verification as contemplated under the said Chapter. He, therefore, submits that the learned Metropolitan Magistrate and the learned Sessions Judge ought to have directed the return of the affidavit in lieu of examination-in-chief, as there was non compliance of Rule- 5 (1) (2) of Chapter VII of the Criminal Manual, so that the complainant/respondent No.1 could present the same in a proper format.

4. Learned Counsel for the respondent No.1 states that instead of returning the affidavit of evidence to the complainant/respondent No.1, the complainant/respondent No.1 be permitted to insert fresh verification clause in the said affidavit of evidence. Learned Counsel relied on the judgment of this Court in the case of **Pushp Holdings Ltd Vs. State of Maharashtra and another, 2008 (2) Bom. C.R. (Cri.) 790**, in support of the said

submission.

5. Perused the papers. The respondent No.1 has filed a complaint as against the petitioners alleging offences punishable under sections 138, 141 r/w 142 of the Negotiable Instruments Act. After the petitioners' plea was recorded, the respondent No.1 filed an affidavit of his examination-in-chief. It appears that the verification is not in the format as contemplated in Rule 5 (1) (2) of Chapter VII of the Criminal Manual. Hence, it would be appropriate to direct the complainant/respondent No.1 to include a fresh verification clause in the affidavit of examination-in-chief already filed by the complainant i.e respondent No.1. The same shall be done as expeditiously as possible. After the fresh clause of verification is inserted, the learned trial Judge to proceed with the case on its own merits and in accordance with law.

6. The Petition is disposed of in the aforesaid terms.

7. All concerned to act upon the authenticated copy of this order.

[REVATI MOHITE DERE, J.]