

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 574 OF 2019

Mahindra & Mahindra Limited

....Petitioner.

Vs.

The State of Maharashtra & Ors.

....Respondents.

Mr. Yashpal Thakur for the Petitioner.

Mr. A.R. Patil, APP for the Respondent No.1-State.

None for the Respondent Nos.2 to 5.

CORAM : A. S. GADKARI, J.

DATE : 17th MARCH, 2021.

P.C.:-

Heard Mr. Thakur, learned counsel for the Petitioner.

2 The issue involved in the present Petition has been squarely covered by a decision of this Court in *Criminal Writ Petition No.1916 of 2019, dated 3rd March, 2021 (SBI Global Factors Limited Vs. The State of Maharashtra & Ors.,)*.

This Court in *SBI Global Factors Limited (supra)* has held that, an accused in a proceeding under Section 138 of the Negotiable Instruments Act, 1881 (for short, "*the NI Act*") cannot be permitted to file an Affidavit of Evidence in lieu of Examination-in-Chief.

3 The record indicates that, the Respondent No.3 (Original accused No.2) filed an Affidavit in lieu of Examination-in-Chief dated 17th

November, 2018 in CC No.11590/SS/2015, before the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai. The Application dated 10th January, 2019 preferred by the Petitioner for discarding the evidence of Respondent No.3 (Original Accused No.2), has been rejected by the Trial Court by its Order dated 10th January, 2019.

4 In view of the aforestated settled position of law, the Respondent No.3 (Original Accused No.2) cannot be permitted to file an Affidavit of Evidence in lieu of Examination-in-Chief. The impugned Order dated 10th January, 2019, is accordingly quashed and set aside.

The evidence of Respondent No.3 (Original Accused No.2) i.e. Affidavit of Evidence in lieu of Examination-in-Chief dated 17th November, 2018, is discarded from record of CC No.11590/SS/2015 by allowing the Application of the Petitioner dated 10th January, 2019.

Learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai is directed to record the evidence of original accused No.2 (Respondent No.3 herein), Mr. T. Nageshwara Rao, by following necessary procedure prescribed by law, in that behalf.

5 Petition is accordingly allowed in terms of prayer clauses (b) and (c).

(A.S. GADKARI, J.)