

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2802 OF 2018**

M/s. H. Parson Private Limited

....Petitioner.

Vs.

The State Of Maharashtra & Anr.

....Respondents.

Mr. Yashpal Thakur for the Petitioner.

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

None for the Respondent No.2.

CORAM : A. S. GADKARI, J.**DATE : 17th MARCH, 2021.****P.C.:-**

Petitioner, Original-Complainant has impugned Order dated 19th June, 2018 passed by the learned Additional Metropolitan Magistrate, 33rd Court, Ballard Estate, Mumbai below Exh-24 in CC No.4674/SS/2015, thereby rejecting its Application for discarding the evidence of accused given on Affidavit and for directions to the accused to lead oral evidence, has been rejected.

2 The record indicates that, the notice issued to the Respondent No.2 has been duly served upon him however, none appears for the Respondent No.2.

3 Mr. Thakur, learned counsel for the Petitioner submitted that, the issue involved in the present Petition is fully covered by the 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.,*). He submitted that, by the impugned Order dated 19th June, 2018, the Trial Court has rejected his Application to discard the Affidavit of Evidence in lieu of Examination-in-Chief of accused and for direction to him to lead oral evidence.

4 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.

In view thereof, the impugned Order dated 19th June, 2018 passed below Exh-24 is quashed and set aside. The evidence of Respondent No.2-accused filed by way of '*Affidavit of Evidence of Accused*' dated 4th May, 2018, is discarded from record of CC No.4674/SS/2015, by allowing the Application of Petitioner filed below Exh-24, dated 19th June, 2018.

5 Learned Additional Metropolitan Magistrate, 33rd Court, Ballard Estate, Mumbai is directed to record oral evidence of Respondent No.2-original accused namely Mr. Louis Mascarenhas by following necessary procedure prescribed by law, in that behalf.

6 Petition is accordingly allowed in terms of prayer clause (b).

(A.S. GADKARI, J.)