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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2541/2011 & CrI.M.A. 9091/2011

UDAY J SHAH

..... Petitioner

Represented by: Mr. Anoop Prakash Awasthi,
Adv.

versus

BOOM BUYING PVT LTD

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

08.05.2017

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1. By the present petition, the petitioner seeks quashing of the criminal complaint case No.2538/2010 titled as Boom Buying Pvt. Ltd. Vs. Shri Uday J. Shah under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881(in short 'NI Act').
2. Learned counsel for the petitioner submits that a perusal of the complaint shows that in the complaint the date on which the accused personally visited the office of the complainant is not mentioned. Learned counsel for the petitioner further relies upon the email sent on 4th December, 2009 between the parties seeking availability of balance stock and confirmation of balance payment.
3. Mere non-mention of the date when month is mentioned is not fatal to complaint under Section 138 NI Act where the complainant is required to prima facie establish four ingredients as to receipt of the cheque in lieu of a legally recoverable debt which on presentation got dishonoured on account of insufficient funds or so and pursuant to legal notice duly served, no

money was paid. Further the email dated 4th December, 2009 being relied upon by learned counsel for the petitioner does not form part of the complaint and would at best be the defence of the petitioner which is to be seen during the course of trial.

4. Finding no merit in the petition and application, the same are dismissed with liberty to the petitioner to take up all the pleas before the learned Trial Court.

MUKTA GUPTA, J.

MAY 08, 2017
‘v mittal’