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

+ CRL.M.C. 3018/2017 & Crl. M.A. no. 12496/2017

VIRENDER RANA Petitioner
Through Mr. Suneet Bhardwaj, Adv. with
petitioner in person.

Versus

BIRENDER SHUKLA Respondent
Through Mr. Suman Jhakur, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **22.11.2017**

Petitioner filed a complaint under Section 200 Cr.P.C. before the trial court against the respondent. Petitioner alleged in the complaint that he was introduced to the respondent by their common friend Mr. John in the year 2013. In the month of September, 2013, respondent represented that he was selling agent of various China based sellers in respect of zinc crystal. He induced the petitioner to place orders for purchase of 99.99% pure zinc crystal and B.N. Powder from the said sellers. Accordingly, petitioner placed orders for supply of zinc crystal on three occasions, that is, on 30th

August, 2013 for supply of 221 kg zinc crystal 99.99% pure & B.N. Powder and paid ₹4,20,000/- towards 100% advance payment, on 25th September, 2013 for supply of 800 kg zinc crystal 99.99% pure & B.N. Powder and paid ₹15,20,000/- towards 100% advance payment and on 5th October, 2013 for supply of 847 kg zinc crystal 99.99% pure & B.N. Powder and paid ₹16,10,000/- towards 100% advance payment. Respondent acknowledged receipt dated 25th September, 2013 of ₹15,20,000/- towards advance but goods were not supplied in respect of the orders as aforesaid. Petitioner examined himself as CW1. He also examined Major Gill and Shri Hari Kishan Srishta as CW2 and CW3 respectively. While deposing in Court, CW1 (petitioner) reiterated what he had stated in the complaint. CW2 and CW3 have also deposed in line with CW1. Learned Metropolitan Magistrate perused the complaint, the statements of CW1 to CW3 and other material placed on record and held that no prima facie case was made out for summoning the respondent for offences under Sections 420/406 IPC and dismissed the complaint vide order dated 19th March, 2016. Petitioner preferred a criminal Revision Petition under Section 397 Cr.P.C. before the learned Additional Sessions Judge, Delhi, which has also been dismissed vide judgment dated 18th April, 2017.

As per the courts below no document was placed on record to substantiate the oral plea.

That is how, petitioner is before this Court by way of present petition under Section 482 Cr.P.C.

I have heard learned counsel for the parties and perused the material placed on record and do not find any perversity in the impugned order thereby resulting in miscarriage of justice.

Petitioner claims to be an income tax payee. However, alleged transactions have not been reflected in the income tax record. This fact has been confirmed by the petitioner, who is present in Court today. Petitioner claims that he had placed the orders on 30th August, 2013, 25th September, 2013 and 5th October, 2013. However, written orders have not been placed on record. No receipts regarding acknowledgement of payment of ₹4,20,000/- and ₹16,10,000/- have been placed on record. Only one carbon copy, purportedly signed by the respondent, was placed on record in respect of ₹15,20,000/-. Even this receipt had remained un-proved. It was simply marked as “Mark-A” in absence of the original thereof. It is trite law that un-exhibited document cannot be read in evidence.

It is also noted that litigations regarding loan transaction are pending

between the petitioner and respondent. Petitioner has filed complaint cases under Section 138 of the Negotiable Instruments Act, 1881 against the respondent before the learned Metropolitan Magistrate, which are pending. In the said cases, it is alleged that petitioner had advanced loans to respondent on two occasions and to repay the loan, respondent had issued cheques, but the same returned dishonoured. The documents placed on record show that two Loan Agreements were executed between the petitioner and respondent on 17th May, 2013 and 20th November, 2013. It is surprising that documents were executed in respect of the loan transactions but not in respect of business transactions regarding supply of goods. The whole story projected regarding placing of orders for supply of goods and advance payment appears to be unrealistic.

For the foregoing reasons, petition is dismissed with costs of ₹10,000/- to be deposited with the Delhi High Court Legal Services Committee within two weeks. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 22, 2017
r.bararia