



\$~26

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

+ **CRL.L.P. 300/2023**

RITA ARORA

..... Petitioner

Through: **Mr. Ayush Puri & Mr. Sultan Haider,**
Advs.

versus

**THE STATE GOVT OF NCT
OF DELHI AND ANR**

..... Respondents

Through: **Mr. Sunil Kumar Gautam, APP for**
the State.

Mr. Mr. S.M. Hashmi, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

04.04.2024

%

1. The present petition under Section 378 (4) of the Cr.P.C. seeks leave to appeal the judgment of acquittal passed by learned Metropolitan Magistrate dated 18.03.2023 in CC No. 244/2018 titled Rita Arora vs. Divyanshu Khanna under Section 138 of the Negotiable Instruments Act.
2. Learned counsel appearing on behalf of the petitioner submits that *vide* the impugned judgment, the learned Trial Court gave a finding that the latter did not have sufficient means to extend the loan of Rs. 6 lakhs which was the amount of the subject cheque, solely based upon an ITR filed by the petitioner. Learned counsel relied upon a judgment of this Court in **Lekh Raj Sharma vs. Yash Pal Gupta, 2015 SCC Online 10074**, to submit that the income tax return cannot be used by the borrower to their advantage. It is further submitted that the fact that the cheque was signed by the respondent was not in dispute before the learned Trial Court.



3. Learned counsel for the respondent submits that the learned Trial Court while recording the evidence of the petitioner during her cross-examination as well as documents on record has correctly appreciated the fact that she did not have the means to extend the loan.

4. Heard learned counsel for the parties and perused the record.

5. It is a matter of record that the respondent did not dispute his signatures on the cheque. The plea taken by the respondent under Section 251 Cr.P.C. was that the amount and the date had been filled in the cheque, however, the name of the payee had not been filled and the same was given to the husband of the petitioner with whom the petitioner had business relations.

6. In totality of the facts and circumstances, the leave petition is allowed. The same may be registered as a criminal appeal and the registry is directed to number it accordingly.

7. In the meantime, respondent is directed to furnish a personal bond in the sum of Rs. 10,000/- with one surety to the satisfaction of the Registrar General of this Court before the next date of hearing.

CRL.A.....(to be numbered)

8. List on 30.08.2024.

9. The Registry is directed to requisition the trial court record for perusal of this Court before the next date of hearing.

AMIT SHARMA, J

APRIL 04, 2024/nk

Click here to check corrigendum, if any