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

\+ CRL.L.P. 404/2023 & CRL.M.A. 10268/2024 (For rectification of Section 378(4) CrPC instead of Section 378(1))

SACHIN GUPTA ..... Petitioner

Through: Mr. Chuman Mandal, Mr. Ravi L., Mr. Arun Sharma and Mr. Raman Kumar, Advocates.

versus

THE STATE AND ANR ..... Respondents

Through: Mr. Hemant Mehla, APP for the State.

**CORAM:**
**HON'BLE MR. JUSTICE AMIT SHARMA**

**O R D E R**

*%* **04.04.2024**

1. The present petition under Section 378(4) of the Code of Criminal Procedure, 1973 seeks leave to challenge the judgment of acquittal dated 12.05.2023 passed by learned Metropolitan Magistrate-02, South Saket Court, New Delhi in CC No. 36936/2019 in the case titled 'Sachin Gupta v. Vinod Gupta' under Section 138 of the Negotiable Instruments Act, 1881.

2. Learned counsel appearing on behalf of the petitioner submits that the defence of the present respondent before the learned Trial Court in response to the notice under Section 251 of the NI Act was that he had taken a loan of Rs. 20,000/- for which he had given a blank cheque which was misused by the petitioner. Learned counsel appearing on behalf of the petitioner submits that the other defence taken by the present respondent was that another person, namely, Sushil Gupta, who had taken a loan of Rs. 95,000/- from the present petitioner refused to pay the same and therefore, the petitioner

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misused the cheque. However, the learned Trial Court while acquitting the respondent has given a finding that the petitioner did not have resources to extend the loan as alleged by the latter/complainant.

3. *Per contra*, learned counsel appearing on behalf of the respondent submits that the learned Trial Court relying on the defence of the respondent has come to the conclusion that the amount taken by the present respondent from the petitioner was a loan of Rs. 20,000/- and not of Rs. 2 lakhs.

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

5. The impugned judgment has primarily acquitted the present respondent on the ground that the petitioner herein could not show any source of income for purposes of extending a loan of Rs. 2 Lakhs to the respondent and not the fact that the loan was of Rs. 20,000/-.

6. Leave granted. The present criminal leave petition is allowed and disposed of. The same may be registered as a criminal appeal and the registry is directed to number it accordingly. Pending application is also disposed of accordingly.

7. In the meantime, respondent no. 2 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.

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

8. List on 28.08.2024.

**AMIT SHARMA, J**

**APRIL 04, 2024/*sn***

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