

IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL MISC. APPLICATION NO. 29 OF 2016
IN
STAMP NUMBER MAIN NO. 3032 OF 2015**

WITH

M/S.LAWANDE SONS, REPRESENTED BY
ITS PARTNER MR. GAURISH
V.P.LAWANDE.

... Applicant

Versus

MR. RAVI KIRAN SHRIKANT JADHAV.

... Respondent

**CRIMINAL MISC. APPLICATION NO. 11 OF 2016
IN
STAMP NUMBER MAIN NO. 3038 OF 2015**

M/S.LAWANDE SONS, REPRESENTED BY
ITS PARTNER MR.GAURISH
V.P.LAWANDE.

... Applicant

Versus

MR.RAVI KIRAN SHRIKANT JADHAV.

... Respondent

**CRIMINAL MISC. APPLICATION NO. 16 OF 2016
IN
STAMP NUMBER MAIN NO. 3030 OF 2015**

M/S.LAWANDE SONS, REPRESENTED BY
MR.GAURISH V.P. LAWANDE. .

.. Applicant

Versus

MRS.RAVI KIRAN SHRIKANT JADHAV.

... Respondent

2 Crma 29 , 11, 16, 17, 25, 26, 27,28 30. 16,

CRIMINAL MISC. APPLICATION NO. 17 OF 2016
IN
STAMP NUMBER MAIN NO. 3034 OF 2015

M/S.LAWANDE SONS, REPRESENTED BY
PARTNER MR.GAURISH V.P.LAWANDE. ... Applicant
Versus
MR.RAVI KIRAN SHRIKANT JADHAV. ... Respondent

CRIMINAL MISC. APPLICATION NO. 25 OF 2016
IN
STAMP NUMBER MAIN NO. 3026 OF 2015

M/S. LAWANDE SONS, REPRESENTED MR.
GAURISH V.P. LAWANDE. ... Applicant
Versus
MRS. RAVI KIRAN SHRIKANT JADHAV. ... Respondent

CRIMINAL MISC. APPLICATION NO. 26 OF 2016
IN
STAMP NUMBER MAIN NO. 3028 OF 2015

M/S. LAWANDE SONS, REPRESENTED
HEREIN BY ITS PARTNER MR. GAURISH
V.P. LAWANDE. ... Applicant
Versus
MRS. RAVI KIRAN SHRIKANT JADHAV. ... Respondent

CRIMINAL MISC. APPLICATION NO. 27 OF 2016
IN
STAMP NUMBER MAIN NO. 3036 OF 2015

M/S. LAWANDE SONS, REPRESENTED BY
ITS PARTNER MR.GAURISH

3 Crma 29 , 11, 16, 17, 25, 26, 27,28 30. 16,

V.P.LAWANDE. ... Applicant

Versus

MR. RAVI KIRAN SHRIKANT JADHAV. ... Respondent

**CRIMINAL MISC. APPLICATION NO. 28 OF 2016
IN
STAMP NUMBER MAIN NO. 3040 OF 2015**

M/S. LAWANDE SONS, REPRESENTED BY
ITS PARTNER MR.GAURISH
V.P.LAWANDE. . . Applicant

Versus

MR.RAVI KIRAN SHRIKANT JADHAV. ... Respondent

**CRIMINAL MISC. APPLICATION NO. 30 OF 2016
IN
STAMP NUMBER MAIN NO. 3042 OF 2015**

M/S. LAWANDE SONS, REPRESENTED BY
ITS PARTNER MR.GAURISH
V.P.LAWANDE. ... Applicant

Versus

MR. RAVI KIRAN SHRIKANT JADHAV ... Respondent

Mr. S. Usgaonkar, Senior Advocate with Adv. Padgaonkar
Kishan for the Applicant.

Mr. Raviraj Chodankar, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.
Date:- 10th June, 2016.

ORDER:

All these criminal applications are filed by the original complainant seeking leave to appeal against acquittal. All the applications are between the same parties and they arise out of separate cheques issued by the respondent no.1 towards payment of rent. As such, the criminal applications which involve common and connected questions are being disposed of by this common order.

2. The brief facts are that the respondent no.1 had obtained commercial premises belonging to the applicant on lease for a period of six years starting from the year 2008 for the purpose of running a vegetarian restaurant. The parties had entered into an agreement of lease dated 3/11/2008 setting out the terms and conditions of the lease which inter alia stipulates that the initial rent agreed was Rs.1,30,000/- per month with an increase of 10% every year. It appears that according to the first respondent the business of the restaurant did not do well, as a result of which the

respondent no.1 was unable to derive any profit out of the same. According to the first respondent, some time in July 2011, the first respondent orally informed the applicant that the lease is terminated and he also handed over the possession and the keys of the said premises to the applicant. A year thereafter i.e. in July 2012, the first respondent addressed a letter to the applicant setting out the reason why the business could not do well and also informed the applicant that the lease is already terminated in July 2011 and the possession is handed over.

3. It appears that the first respondent had passed post dated cheques in favour of the applicant, which according to the first respondent were by way of security for payment of rent. On the contrary, according to the applicant the said posted dated cheques were obtained towards payment of rent. It was on 20/7/2012 that the applicant presented the subject cheques for realization which got dishonoured. As such after issuance of statutory notice separate complaint cases under section 138 of the Negotiable Instruments Act (the Act, for short) were filed against the

first respondent before the Judicial Magistrate First at Panaji. The parties went for trial and produced oral and documentary evidence. The learned Magistrate by the impugned judgment and order dated 22/7/2015 has acquitted the first respondent of the offence under section 138 of the Act on the ground that the applicant had failed to prove that the subject cheques were issued by the first respondent towards discharge of a legally enforceable debt or liability. Feeling aggrieved the applicant/complainant is before this Court.

4. I have heard Mr. Usgaonkar, the learned Senior Counsel for the applicant and Mr. Chodankar, the learned counsel for the first respondent. With the assistance of the learned counsel for the parties, I have perused the copies of the record produced.

5. It is submitted on behalf of the applicant that the subject lease was for a period of six years i.e. from the year 2008 to 2014. The learned Senior Counsel has referred to the recitals in the lease deed and, in particular, to Clause no.6 thereof which permits the lessor to terminate the lease.

He has also pointed out Clause no.9 in which, in the event the lessee prematurely terminates the lease, the lessee shall forfeit the entire security deposit (in the sum of 18 lakhs) in favour of the lessor. The learned Senior Counsel has also pointed out that the modalities for handing over of possession in the event of termination of the lease or the expiry thereof by efflux of time, were specifically set out which are not shown to be followed in this case. It is submitted that although according to the first respondent, the lease was orally terminated, in July 2011, admittedly the rent for the subsequent four months i.e. till November 2011 is paid by the respondent no.1. He, therefore, submits that the finding recorded by the learned Magistrate that the subject cheques were not issued towards payment of rent and as such were not issued towards discharge of legally enforceable debt or liability cannot be sustained and needs a re-look.

6. On the contrary it is submitted by the learned counsel for the respondent no.1 that as the applicant was pressurizing the respondent no.1, he was required to pay the

rent for the four months subsequent to the date on which the respondent no.1 had terminated the lease. He submits that the keys of the premises have already been handed over to the applicant and as such, the lease agreement having come to an end, the subject cheques have rightly been held to be not issued towards any subsisting liability for payment of rent. The learned counsel was at pains to point out that the applicant had presented the subject six cheques at one time i.e. on 20/7/2012. The learned counsel has also pointed out Clause 10 of the lease deed, in which there is an arbitration clause requiring the parties to refer the dispute arising out of the lease deed to an arbitrator. He submits that the respondent no.1 has explained the circumstances in which he was required to pay the rent for the period of four months subsequent to the date on which the lease deed was terminated in his defence evidence. He submits that the view taken by the learned magistrate is a plausible view which does not require any interference.

7. I have given my anxious consideration to the rival circumstances and the submissions made. At the out the set

it may be mentioned that the reliance placed on Clause 10 of the lease deed pertaining to incorporation of the arbitration clause is concerned, except making a bare reference to the same in para 55 of the judgment, the learned Magistrate has not recorded a finding as to whether the complaint would be maintainable or not in view of the Arbitration Clause. In any case, prima facie at this stage, the offence under section 138 of the N.I. Act has a distinct cause and it cannot be accepted at this stage, that, on the basis of the arbitration clause, the complaint would not be maintainable. The learned Senior Counsel for the applicant points out that the applicant has already filed an application under section 11 of the Arbitration and Conciliation Act for appointment of an arbitrator. Be that as it may, it is not necessary to go into the said aspect in the present application.

8. Coming back to the merits of the case, the learned Magistrate in para 19 of the judgment has noticed that the first respondent having admitted the issuance of the cheques, a presumption under section 118(a) r/w Section 139 of the N.I. Act arises in favour of the applicant and the

burden shifts on the respondent no. 1/accused to rebut the same. In para 23, the learned Magistrate has noticed that the subject cheques pertain to the rent for the period between December 2011 to July 2012. In para 33 of the impugned judgment the learned Magistrate has also noticed that the respondent no.1 had paid rent to the applicant up to November 2011. If that be so, it can be seen that the respondent no.1 had paid the rent subsequent to the date on which according to him the lease was unilaterally terminated. Prima facie at this stage no clause in the lease has been pointed out which permits the lessee to unilaterally terminate the lease deed. It is also not shown that there is any possession receipt as such executed between the parties evidencing the delivery of possession. It is neither necessary nor appropriate at this stage to examine the finding and the evidence in detail. In my considered view in the absence of a term in the lease deed permitting the lessee to unilaterally terminate the lease deed and in the absence of any possession receipt, the finding that the subject cheques were not issued towards the discharge of any legally enforceable debt or liability (as rent payable) will be required to be

11 Crma 29 , 11, 16, 17, 25, 26, 27,28 30. 16,

examined and, as such, a case of grant for leave is made out. In the result the criminal applications are allowed. The appeal shall be treated as admitted. The learned magistrate shall take action under section 390 of Cr.P.C.

C. V. BHADANG, J.

ap/-