



Suzana

IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL APPEALS NO.24, 25, 26, 27, 28, 29, 30, 31 AND 32
OF 2016**

M/s. Lawande Sons,
a partnership firm registered
under the Indian Partnership
Act and having its office at Lobo
Building, Next to Sher-e-
Punjab, 18th June Road, Panaji,
Goa – 403001; represented
herein by its partner Mr.
Gaurish V. P. Lawande, son of
Mr. Vinayak R. P. Lawande,
aged 43 years, married,
businessman, residing at House
No.370/1, 'Savitri Niwas', Next
to Kamat Hospital, D. B. Road,
Miramar, Panaji, Goa –403001.

... Appellants

Versus

Mr. Ravi Kiran Shrikant
Jadhav, sole proprietor of M/s.
VEG BABA, major, married,
businessman, resident of
'Shripushpa', Wikaswadi, At
Post – Kherdi, Taluka -
Chiplun, District – Ratnagiri,
State of Maharashtra – 415604.

... Respondent

**Mr Parag Rao, Advocate with Ms. Sowmya Drago, Advocate
for the Appellants.**

Mr Raviraj Chodankar, Advocate for the Respondent.

CORAM: BHARATI DANGRE, J.
Reserved on : 1st August, 2025.
Pronounced on: 8th August, 2025.

JUDGMENT:

1. The nine Appeals filed by M/s. Lawande Sons, call in question the common judgment dated 22.04.2015 passed by the Special Magistrate, First Class, Panaji in the nine complaints involving nine cheques issued by the accused being dishonoured and the judgment has acquitted the accused under Section 138 of the Negotiable Instruments Act, 1881.

On 10.06.2016, this Court granted leave to appeal by allowing the applications filed in the appeal and all the appeals came to be admitted with direction to the Magistrate to take action under Section 390 of Code of Criminal Procedure, 1973.

2. The appeals came up for hearing and I have heard learned Counsel, Shri Parag Rao along with Ms Sowmya Drago for the Appellant and Mr Raviraj Chodankar, learned Counsel representing the Respondent.

The Appeals raise a challenge to the impugned judgment revolving around the Lease Deed executed between the Appellant, a partnership firm, which is the owner of premises known as Vaglo Vision, situated on the ground floor at 18th June Road, Panaji-Goa.

The accused/Respondent, Mr Ravi Kiran Shrikant Jadhav, being a businessman involved in running of restaurants, since expressed interest in leasing out the premises for running of a restaurant, a Deed of Lease came to be executed on 03.11.2008 between M/s. Lawande Sons and Ravi Kiran Shrikant Jadhav, referring them as Lessors and Lessee respectively, it record that the Lessors are the owners of the

various shops Vaglo Vision with distinct numbers and areas set out in the Lease Deed described with its distinct location approved by PDA.

The Deed further record that the lessor used to run a business of pure vegetarian restaurant in the shops and continue to have in the said shops all the items, fixtures, furniture, kitchen equipments, required to run a restaurant as mentioned in Schedule III and the said shops along with the items mentioned in Schedule III along with the sump, gas bank and the over-head tanks, is hereinafter termed as the 'leased premises'.

The Lessee approached the Lessor to lease out the premises and the lessor agreed to let out the said premises to the Lessee in consideration of rent reserved and the Lessee's covenant and the conditions to be observed and performed by him as set out in the Deed of Lease. As a necessary covenant, it was agreed that the Lessor lease to the Lessee all the leased premises with the items described in Schedule III, situated in Shops bearing No.4, 5 and 6 shown in the plan along with sump, with a storage capacity of 10,000 litres and a Gas Bank in the open space along with the two 5000 litres sintex tanks, mounted on the terrace of the said building, to run a pure vegetarian restaurant for a fixed term of six years; with effect from 03/11/2008 till 02/11/2014 at a monthly rent of Rs.1,30,000/- (Rupees One lakh thirty thousand only), subject to an increment of 10% per annum, for running a Pure Vegetarian Restaurant under the name and style of "Veg Baba". The Lessee agreed to deposit an amount of Rs.18 lakhs as interest free security deposit by cheque drawn on Saraswat Co-operative Bank Ltd., in favour of M/s Lawande Sons. The Lease Deed record that the security deposit shall be refunded at the time of delivery of possession of the leased premises by the Lessee to the Lessors, upon termination of the Lease Deed, without any interest, subject to the conditions stated therein.

3. The Lease Deed comprise of various other covenants imposing obligations upon the Lessor as well as the Lessee and the Lessor covenant, that on the Lessee paying rents reserved and performing the covenants, shall peacefully possess and enjoy the leased premises without any interference or disturbance from the Lessor or from any other person or person or persons, lawfully claiming by, from or under them.

The Lease Deed specifically contemplate monthly rentals as stipulated under clause 8:

“8. The said monthly rental of -Rs.1,30,000/- (Rupees One lakh thirty thousand only) mentioned in clause 1 above is subject to a 10% escalation every year till the end of the term of the lease and the escalation shall be as follows:

i) From 03/11/2008 to 02/11/2009 the monthly rental is Rs.1,30,000/- per month.

ii) From 03/11/2009 to 02/11/2010 the monthly rental is Rs.1,43,000/- per month.

iii) From 03/11/2010 to 02/11/2011 the monthly rental is Rs.1,57,300/- per month.

iv) From 03/11/2011 to 02/11/2012 the monthly rental is Rs.1,73,030/-per month.

v) From 03/11/2012 to 02/11/2013 the monthly rental is Rs.1,90,333/-per month.

vi) From 03/11/2013 to 02/11/2014 the monthly rental is Rs.2,09,367/- per month.”

4. Clause 9, 11 and 12 of the Lease Deed is relevant and it is reproduced below:

“9. If for any reason whatsoever, the LESSEE prematurely terminates the lease, the LESSEE shall forfeit the entire security deposit in favour of the LESSORS.”

..

“11. The LESSORS do hereby deliver lawful, exclusive and physical possession of the leased premises to the LESSEE and the LESSEE has taken possession of the same today.

12. The term of lease for the said leased premises, shall be strictly for a fixed term of 6 years commencing from 03/11/2008 and expiring on 02/11/2014.”

5. The Lease Deed contain a clause for resolution of disputes by referring it to sole arbitrator to be governed by the Arbitration and Conciliation Act, 1996 with the venue of arbitration being set out as Panaji-Goa.

6. Pursuant to the lease agreement being executed on 03.11.2008, an addendum to the Deed of Lease was entered between the parties on 13.04.2009, where the Lessee was permitted to sell liquor and non-vegetarian food in the leased premises.

7. It is the case of the complainant, M/s. Lawande Sons, that as a stipulation in the Lease Deed with reference to the payment of the rentals, the accused, Ravi Kiran Shrikant Jadhav, issued 73 cheques, for every month from April 2012, each cheque for an amount of Rs.1,73,030/- drawn on Saraswat Co-operative Bank Ltd.

On presenting some of the cheques, it was returned with an intimation as the same was dishonoured with the specific endorsement “Payment stopped by drawer.” The nine cheques of the same amount were issued for the month of February 2012 to October 2012 and the cheque returned date is 23.07.2012 and 31.10.2012.

8. On 17.08.2012, the complainant through their Advocate, sent letter/notice to Shri Ravi Kiran Shrikant Jadhav, calling upon him to pay the amount of cheque to the complainant and the said letter was

send by way of a statutory notice under Section 138 of the Negotiable Instruments Act, 1881. The notice being received by the Lessee since an acknowledgement was issued pursuant to the receipt of the notice, Mr Ravi Kiran, through his Advocate, forwarded a reply specifically adopting the stand that from July 2011, he had terminated the lease and hence he denied the liability that the money was owed to the complainant under the subject cheques.

The complainant sent rejoinder notice adopting a stand that the lease was not validly/legally terminated.

9. The aforesaid circumstances resulted into lodging of nine distinct complainants under Section 138 read with Section 142 of the Negotiable Instrument Act, 1881 by M/s Lawande Sons, praying for issuance of process against the accused, Ravi Kiran and praying for appropriate punishment to be imposed upon him. The cause of action in the complaint was culled out as a denial of liability by the Lessee to pay money towards dishonour of cheque and this was alleged to have occurred on 07.09.2012 upon expiry of period of 15 days from the said receipt of notice by the accused.

10. In light of the complaint filed, the Judicial Magistrate First Class, Panaji, issued process to Mr Ravi Kiran Shrikant Jadhav/the accused by recording that on perusal of the document, complaint and affidavit in verification of the complaint, a prima facie case is made out for issuance of process under Section 138 of the Negotiable Instruments Act, as the ingredients of the same are satisfied.

Upon appearance by there accused, the substance of accusation was explained to him and since he pleaded not guilty and was subjected to trial. On behalf of the complainant, Mr Gaurish Lawande stepped into the witness box and produced his affidavit in evidence. In the

cross-examination he admitted that the cheques which are subject matter of the case was in respect of the rent for the particular month but he was unable to state with precision as to the cheque was for which month.

He categorically admitted that he had not deposited the cheques prior to February 2012 as the accused had asked him to hold on, though he did not give any specific reason. He, however, denied the suggestion that the accused handed over the key of the premises in July 2011 and therefore he had not presented the cheques from the month of July 2011 nor demanded the rent.

Mr Gaurish Lawande admitted that the accused had handed over 73 cheques from 03.11.2008 to 03.11.2014 as given in the list and denied the suggestion that he was not liable to pay any rent for premises since July 2011. He also denied that there was some negotiation going on between them in regards the rent and therefore the cheques were not presented.

11. On behalf of the accused, Ravi Kiran Shrikant Jadhav himself stepped into the witness box along with one Shekhar Dessai, an employee at Hotel Abhiruchi at Chiplun and one Shrinivas Vaidya, a Tax Consultant of the accused.

DW1, Mr Ravi Kiran Shrikant Jadhav, deposed about the Deed of Lease being executed in November 2008 and he categorically deposed that he had spent around Rs.2.50 lakhs to Rs.4 lakhs towards repairing the equipments and starting a business in the premises and though he somehow managed, the business was not profitable.

According to him, when he informed the complainant about this aspect, he agreed to permit serving of non-vegetarian items and as far

as liquor licence is concerned, Mr Gaurish Lawande had assured him that he would secure the licence for him.

DW1 specifically adopted a stand that in July 2010 he sent notice to the complainant expressing his desire to close down the business and this notice was delivered by his Manager, Shekhar Desai by hand delivery to the Manager of Gaurish Lawande by name Mr Dongre, who acknowledged the receipt of the same. Once again, in December 2010, he informed Mr Gaurish Lawande of his decision to close the business and he cleared all the dues and lease rent upto December 2010. However, Mr Lawande informed him that he would reduce the lease rent and also informed that one of his friend by name Shetty was running hotels in Delhi and who on being visited at Delhi had promised to come to Goa.

As per DW1 when he approached Gaurish Lawande for reduction of rent, he demanded the payment of rent as per the old agreement and thereafter he assured to discuss the reduction of rent. In his deposition, DW1 has specifically deposed thus:

“The post dated cheques which I had given to the complainant towards the rent for the months of January 2011 to June 2011 were not presented by the complainant for payment at the relevant time, as the rates of the rent were to be changed by the fresh Deed of Lease and I was to issue fresh cheques for the revised rents for the said period. When the complainant deposited the cheque in the month of June 2011, I inquired with the complainant and the complainant informed me that he would encash the cheques and pay me the amount in excess of the rents. This continued and as such in August 2011, I closed the said hotel and my Manager Shekhar Dessai handed over the keys of the said hotel to the complainant in his office, with one Mr. Dongre, the employee of the complainant. Even thereafter,

the complainant was encashing my cheques. I have paid the rents to the complainant up to the month of November 2011. The cheque in respect of the rent for the month of November 2011 was encashed in March 2012.

On 12.07.2012, I issued a notice of termination of the agreement of Lease to the complainant, which was received by the complainant on 16.07.2012. After the receipt of the said notice, the complainant presented the cheques in respect of the rents for the months of December 2011 to May 2012 on one day and the three cheques in respect of the rents for the months of June, July & August 2012 were presented in November 2012. The said nine cheques are the subject matter of these cases before this Court.”

12. DW2, in support of the case of the accused, informed the Court that the accused had decided to wind up the business in December 2010 as it was not possible for him to continue it but the Hotel was not handed over till June 2011 as Mr Gaurish Lawande was supposed to hand over the business to some other party. He also deposed that Mr Gaurish Lawande did not encash the cheques in respect of the rent for the month of January 2011 to June 2011 but he suddenly deposited one of the cheque for payment in July 2011. He deposed that on 02.08.2011, he handed over the keys of the premises to one Mr Dongre, Manager of the complainant, however, no acknowledgment was taken by him at the time of handing over the keys.

DW3, the Tax Consultant was also examined and he supported the case of the accused by deposing that there were meetings with Mr Lawande on 11.02.2012 and 12.02.2012, where the issue relating to exorbitant rent and future business was discussed and a conclusion was drawn that a new lease agreement was required to be executed by substituting the existing one and the reduction of rent and continuation

of earlier security deposit would be the main feature of the proposed lease agreement.

13. It is in the backdrop of the aforesaid evidence being laid down before the Judicial Magistrate First Class at Panaji as common evidence, the question formulated for determination was as follows:

“Whether it is proved that the cheques were issued by the accused towards payment of rent.”

According to the complainant, when the complainant presented the post-dated cheques given by the accused towards lease rent per month and which were not honoured, the accused adopted a stand that he had terminated the lease and handed over the possession of the suit premises to the complainant, as his stand was specific, that the lease was terminated in July 2011. However, what was brought on record was the notice of termination of lease dated 12.07.2012 but it is the pleaded case of the accused that the premises were already handed over though there is no proof thereof.

14. The learned Counsel, Mr Rao would place reliance upon the notice dated 12.07.2012, produced by the complainant and this notice, according to him, is issued by Ravi Kiran Shrikant Jadhav intimating about the termination of lease and requesting the complainant to hand over all post-dated cheques in his possession which were given as security deposit for the period commencing from August 2011 till end of the lease period and a request was made not to present the cheques as the lease was terminated since July 2011.

The bone of contention between the parties is the actual date of termination of lease as Mr Rao would submit that this is for the first time in writing, the complainant was informed about termination of lease whereas, according to Mr Chodankar, it was long back in June

2011, the accused had mentioned to the complainant about closing of the restaurant and termination of the lease deed. It is the submission of Mr Chodankar that though the accused tried to communicate the fact about the closure of the restaurant by writing letters, the letters were not accepted and therefore, the termination was verbally communicated by way of handing over the keys of the premises in the month of July 2011 and even the list of items in the premises was also handed over. It is thus the stand adopted by the accused that the lease stood terminated from July 2011 and no liability incurs thereafter.

15. For ascertaining what was the permissible mode for termination of the lease agreement, it is necessary to refer to the covenants/stipulations in the Lease Deed.

The relevant clause for termination of lease by the Lessor which made it lawful for the Lessor to issue a notice of termination of lease read thus:

“6. The LESSEE does hereby agree that in the event of bouncing of any of the cheques given hereunder or in case of breach or non-observance of any of the covenants and agreements herein contained on the part of the LESSEE, then and in either of such cases, it shall be lawful for the LESSORS to issue a notice of termination of lease, which shall come into effect immediately upon receipt of the same by the LESSEE and the lease shall stand terminated forthwith and the LESSEE shall forfeit the entire security deposit in favour of the LESSORS and vacate the leased premises immediately, within a period of one week from the date of receipt of the said notice failing which the LESSEE shall be deemed to be a trespasser in the leased premises.”

16. The above clause is to be read along with clause no.7, as to how delivery of possession upon termination of lease shall be accomplished. Clause 7 read thus:

“7. At the time of delivery of possession upon the termination of lease, the LESSEE and the LESSORS shall be jointly present in the leased premises and the LESSORS shall examine the leased premises for any damages caused to the leased premises by the LESSEE and evaluate the damage and the same shall be deducted from the security deposit and the balance if any, shall be refunded to the LESSEE.”

Further, clause 9 of the Lease Deed contemplated that for whatsoever reason the Lessee prematurely terminates the lease, he shall forfeit the entire security deposit in favour of Lessor.

17. The complainant, by entering into the witness box, had categorically deposed that in terms of the Deed of Lease dated 03.11.2008 the subject premises were given on rental basis by his Firm to the accused and in the wake of the addendum dated 13.04.2009, the accused was permitted to sell liquor and serve non-vegetarian food. Since the cheques for the rental amount were handed over by the accused to the Firm, the cheque bearing No.277248 dated 25.04.2012 in amount of Rs.1,73,030/- was presented to the banker and it returned back, dishonoured. Thereafter, the complainant issued a notice calling upon the accused to make good the payment in wake of the subsisting liability in payment of rent since the Lease Deed was still in subsistence, and for the first time in the reply the accused adopted a stand that from July 2011 the lease has been terminated and therefore there exist no liability and it is this precise issue whether the lease was terminated in July 2011, which would be by an implication as, for the first time in writing the lease was only terminated on 12.07.2012 and

this issue was determined with the help of the evidence that was adduced before the Magistrate.

At this juncture it is necessary to refer to Section 111 of the Transfer of Property Act, 1882, which in Chapter V deals with Leases of Immovable Property. As far as the determination of lease is concerned, the said Section prescribe that the lease of immovable property would be determined in the following way:

“111.Determination of lease. - A lease of immoveable property determines-

(a) by efflux of the time limited thereby:

(b) where such time is limited conditionally on the happening of some event - by the happening of such event:

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event - by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(f) by implied surrender:”

18. Admittedly, in the present case, the express communication for termination of lease is the notice dated 12.07.2012.

If it is the case of the accused that there is termination of lease by implied surrender, then the burden is on him to prove the same and in my considered opinion, the evidence brought on record before the Magistrate is insufficient to establish said termination by implication.

Mr Ravi Kiran Jadhav, who, in his evidence has made reference to various facts in an attempt to demonstrate that the lease was

terminated much before the notice was sent on 12.07.2012, has failed to bring any evidence before the Court in that regard. It is his case that in July 2012 he had sent the notice to the complainant expressing his desire to close down the business and this notice was attempted to be sent to the Manager of Gaurish Lawande, one Mr Dongre, but he admit that this acknowledgment is not available and Mr Dongre at subsequent point of time took away the copy of the original endorsement on the pretext that his job is at stake.

It is unacceptable that the accused would accede to the demand of the Manager of the complainant and return the original copy. Thereafter, he refer to some discussions about reduction in price of the lease rent and it is his case that he continued to hold on the business since one Mr Shetty was interested in taking up the business and the complainant intended to hand over the business to him. However, unfortunately, there is no evidence adduced in that regard about any meeting being held with Mr Shetty or any specific instructions being given by the complainant to the accused that he shall continue to run the business till Mr Shetty takes over.

19. Every attempt to prove that there was termination of lease prior to the notice given in writing on 12.07.2012 has failed and to establish implied termination, it is not the bare statement but some proof thereof which ought to have been tendered, to establish that the lease was terminated by implied surrender before its period came to an end and this is the precise reason, which persuade me to reverse the finding recorded in the impugned judgment, which record that the material relied upon by the accused raises “probability that the accused had terminated the lease since July 2011”.

The Magistrate has recorded that the accused has explained the circumstances in which he has made payment of the rents subsequent

to July 2011 and therefore the argument advanced on behalf of the complainant that the accused had paid the rent subsequent to July 2011 proves that the lease was terminated in July 2011, cannot be accepted. The Trial Court has wrongly arrived at a conclusion that the lease was terminated since July 2011 and therefore the complainant was not entitled for rent thereafter. However, the accused DW1 in cross-examination has specifically admitted thus:

“The cheque which is the subject matter of this case was the original post dated cheque issued by me to the complainant, at the time of executing the Lease Deed. It was in respect of the rent for the month of April 2012. The Lease Deed between me and the complainant was terminated in August 2011. I had not issued any notice of termination to the complainant prior to 12.07.2012.”

In the wake of the aforesaid clear admission that the lease was not terminated in writing by issuing any communication prior to issuance of notice dated 12.07.2012 and since the accused has failed to prove the termination of Lease Deed by implication, the finding rendered by the Trial Court based on probability, in any case, is not a finding which deserve to be upheld, as the Magistrate has expressed that the accused has rebutted the presumption under Section 108A and Section 139 of the Negotiable Instruments Act, 1881 that the cheques were issued towards legally enforceable liability.

20. One important aspect which must be kept in mind is the Award passed by the learned Arbitrator upon the proceedings being referred to him, the claim being instituted by M/s Lawande Sons against the Respondent Ravi Kiran Shrikant Jadhav, the arbitration arising out of the Deed of Lease dated 03.11.2008.

The learned Arbitrator answered the first issue framed in the following manner:

“43. For the reasons stated above, therefore, the issues framed in the matter are answered as under:-

I) Whether the Claimant prove that the termination of the lease deed dated 3.11.2008 and addendum dated 13.4.2009 by the Respondent is bad in law and that there was no termination of the lease deed till March, 2014:

A. No. The Claimant has failed to establish that the termination of the lease is bad in law and that there was no termination of the lease till March, 2014. The lease was validly and effectively terminated under notice dated 12.7.2012 Exhibit C.1/H.

II) Whether the Claimant proves that the possession was illegally retained by the Respondent in contravention of the agreement between the parties dated 3.11.2008 and addendum dated 13.4.2009?

A. No. The Claimant has failed to establish that the Respondent had retained the possession in contravention of the said agreement and the addendum thereto. In fact, the Respondent stopped the business activities in the leased premises in July, 2011 and delivered the possession of the premises to the Claimant on 2.8.2019 and thereafter the Respondent was not in possession of the leased premises.”

21. In the wake of the finding that the lease was validly terminated under notice dated 12.07.2012, based upon the evidence that was brought before the learned Arbitrator, the claim was partly allowed and the Respondent was directed to pay an amount of Rs.1,73,030/- (Rupees One Lakh Seventy Three Thousand Thirty only) as rental amount for the month of July, 2012 to the claimant along with simple

interest of 9% per annum from August 2012 till the date of the payment of the entire amount to the claimant.

In the wake of the aforesaid, I am unable to subscribe to the view expressed by the learned Magistrate, which is purely based on probability, who had accepted the case of implied termination which has not been proved by any cogent evidence as regards termination of the lease and handing over of the premises to the Lessor prior to the issuance of termination notice dated 12.07.2012.

Since the impugned judgment for the aforesaid reasons cannot be sustained, the same is quashed and set aside. As a consequence of the judgment being set aside, the proceedings in the nine complaints lodged before the Judicial Magistrate First Class at Panaji stand restored and the accused be tried for committing the offence under Section 138 of the Negotiable Instruments Act, 1881.

The Criminal Appeals are allowed in the aforesaid terms.

BHARATI DANGRE, J.