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**IN THE COURT OF THE ADDL. CHIEF METROPOLITAN
MAGISTRATE, 8TH COURT, ESPLANADE, MUMBAI.
Judgment U/sec. 355 of Cr. P. C.**

(Presided over by Smt. A. H. Kashikar.)

- (a) The serial number of the case : 352/PW/2017
- (b) The date of commission of offence : 02/03/2017
- (c) The name of the informant : The State ("I" Branch, SB-1, CID in LAC No. 34/2017)
(At the instance of informant)
- (d) The name of the accused, his parentage and residence if any : 1. Rabbiul Chanmiya Mizi
Age : 32 years.
(Trial Separated)
2. **Abbas Lalmiya Shaikh**
Age : 45 years.
3. **Rabiyakhatun Abbas Shaikh**
Age : 40 years.
Both R/o. Shanti Nagar
Zopadpatti, Galli No. 03, In front of Vanikaran,
Maharashtra Nagar,
Mankhurd, Mumbai
- (e) The offence complained of or proved; : Under Rule 3 punishable under Rule 6 of the Passport (Entry into India) Rules, 1950, and under Para 3(1) of the Foreigners Order, 1948 punishable U/Sec. 14 of the Foreigners Act, 1946.

- (f) The plea of accused : Not proved.
: The accused Nos. 1, 2 and 3
pleaded not guilty.
- (g) The final order : Accused Nos. 1, 2 and 3 are
acquitted.
- (h) The date of final order : 11/02/2020

JUDGMENT

(Delivered on 11/02/2020)

1] Accused Nos. 2 and 3 stands charge-sheeted along-with absconding accused No. 01 for breach of condition, of Rule 3 punishable under Rule 6 of the Passport (Entry into India) Rules, 1950, and under Para 3(1) of the Foreigners Order, 1948 punishable U/Sec. 14 of the Foreigners Act, 1946.

2] Prosecution case in brief, is as under :-

The complainant head constable Vasant Rajaram Patil was attached to 'T' Branch of SB-1, CID, Mumbai as Police Head Constable. On 01/03/2017 API Pandurang Dashrath Khillari received information about some Bangladeshi infiltrators being residing illegally at Ray Raod, Mumbai. Squad was deputed for raid. He along-with the police staff and the secret informer proceeded towards Ray Road, Mumbai and accosted the accused persons. It is alleged by the prosecution that upon inquiry, all those persons i.e accused persons admitted to be Bangladeshi nationals. Accordingly, the report was lodged by the first informant HC Vasant Rajaram Patil.

3] Thereafter, LAC No. 34/17 came to be registered and it was investigated by API Panduran Khillari. He formally arrested the accused persons under arrest panchanama. Show Cause Notices were issued to accused persons by DCP of 'I' Branch. Upon completion of investigation I. O. found sufficient evidence against accused persons and therefore, he filed charge-sheet against them.

4] My Ld. Predecessor framed charge against the accused Nos. 1, 2 and 3. It was read over and explained to the accused to which they pleaded not guilty and claimed to be tried. In support of their case, prosecution has examined two witnesses. Accused No. 01 became absconding during trial, hence his trial is separated from other accused. Thereafter, statement of accused U/sec. 313 of Cr. P. C. is recorded. Accused have filed original documents on record to establish their nationality. It is their defense that they are Indian Citizens. They also relied upon documentary evidence. Thus, their defense is of total denial.

5] Heard Ld. APP Smt. Lingayat and accused in person at length.

6] Following points arose for my determination and I record my findings against each of them with reasons to follow.

<u>Sr.</u> <u>No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether prosecution proved that, on or before 01/03/2017 at about 00.45 hrs.,	

accused Nos. 2 and 3 along-with absconding accused no. 1 were found being Bangladeshi Nationals entered into India, particularly in Mumbai without possessing valid passport or travel documents and thereby committed breach of condition **Under Rule 3 punishable under Rule 6 of the Passport (Entry into India) Rules, 1950 ?**

In the negative.

2 on or before 01/03/2017 at about 00.45 hrs., accused Nos. 2 and 3 along-with absconding accused no. 1 were found being Bangladeshi Nationals entered into India through unauthorized route without leave of civil authority or Registration Officer and thereby committed an offence punishable **Under Para 3(1) of the Foreigners Orders, 1948 punishable U/Sec. 14 of the Foreigners Act, 1946 ?**

In the negative.

3 What Order?

: Accused Nos. Nos. 2 and 3 are acquitted.

REASONS

AS TO POINT NOS. 1 & 2 :

7] Both these points are interlinked with each other, hence for sake of convenience, both are discussed simultaneously.

In order to prove aforesaid offences against the accused, prosecution examined in all two witnesses.

1. PW 1 Police Head Constable Vasant Rajaram Patil Exh.3 (First informant)

2. PW 2 API Pandurang Dashrath Khillari Exh.05 (I.O.)

8] Prosecution has relied upon the documents such as FIR below Exh.4, show cause notices below Exh. 09 to 11 etc.

9] PW 1 Police Head Constable Vasant Rajaram Patil is the Head Constable attached to I Branch whereas PW 2 API Pandurang Dashrath Khillari is the API attached to I Branch. PW 1 has categorically deposed that on dated 01/3/2017, the PW 2 Shri Pandurang Khillari received information from the secret informer that some Bangladeshi infiltrators are residing in Ray Road Mumbai. Therefore, he himself, PW 2 API Pandurang Khillari and other staff members went to Ray Road, Mumbai at about 00.45 am. PW 2 Shri Pandurang Khillari has deposed that after receipt of said information he had conveyed said information to the Sr. PI and Sr. PI issued the orders to take appropriate action. He further deposed that they had prepared the squad and went to the spot at 00.45 am. Both the witnesses further deposed that secret informer pointed out towards one hut, they knocked the door of hut and one person namely Rabiul came out of the hut and he gave reckless answers to their inquiry. They further deposed that other accused persons were also accosted by them from Shanti Nagar, Galli No. 03, Mankhurd, Mumbai as per the information given by accused Rabiul. All of them had admitted that they are resident of Bangladesh. Therefore, PW 1 filed his report vide Exh.4.

10] PW 2 further deposed that all the accused person were brought to I Branch office and during inquiry they disclosed that the accused persons had entered into India through unauthorized route without valid document of entry because of the poverty and starvation spread over in Bangladesh. Hence, show cause notice was given by the appropriate authority i.e the Deputy Commissioner of Police. After completion of investigation he has filed charge-sheet against the accused persons.

11] Here, it is visible that the author of show cause notices i.e the Deputy Commissioner of Police is not examined here. However, said notices are not directly denied by the accused. To the contrary, the suggestion was put during cross examination that the notice was issued after commencement of trial. Said suggestion make it clear that show cause notice was served on the accused. The notices are filed at Exh. 09 to 11 bearing signature and the date of issuance of the same. The contrary is not established by the defense therefore, I hold that the show cause notices are proved and the non examination of Deputy Commissioner of Police is not fatal to the prosecution case.

12] Ld. APP has argued that the prosecution has established prima facie case against accused persons and therefore the burden is upon the accused to show that they are not the foreigner. Undoubtedly, there is no question about the legal position that when the question arises as to whether or not a person is a foreigner, the burden lies upon the accused U/sec. 9 of the Foreigners Act, 1946 to establish that he is Indian citizen in the manner claimed by him. To that effect I have perused the record and the cross-examinations led by the defense side.

On perusal of cross examination of PW 1 and PW 2, it is nowhere satisfied that the suspect of prosecution regarding nationality of accused and their unauthorized entry into India was unjust or unfair. It is visible that the witnesses are the public servants and they were discharging their duty as a public servant and the raid was conducted as a part of their duty. The issue of enmity is not raised even by the defense also. Therefore, I hold that there cannot be a suspect on the intention of PW 1 and PW 2 in launching prosecution against the accused. However, as said above, it is for the accused to prove that they are not the foreigner, once reasonable ground for prosecution is established by the prosecution machinery. Here it is visible that the accused persons have filed various documents on record. Oral evidence is not given by the accused but original public documents are filed on record by them.

13] The accused No.2 has filed his Aadhar Card, PAN Card, Election Card, Passbook, Health Card and Ration Card. It is pertinent to note Aadhar Card, PAN card, Election Card and Ration Card are the documents issued by the public authority and the same can be termed as public document. They are admissible in evidence.

14] Accused no. 3 has filed her Aadhar Card, Pan Card and Election Card. All these documents are the public documents.

15] The bunch of original documents is filed by the accused side to establish the nationality of accused persons and it is argued that all accused persons are the Indian nationals. It is visible that sufficient documentary evidence is produced on record by the accused to discharge the burden of proving nationality. The prosecution just put

the suggestion that these documents are false and fabricated. However, no rebuttal evidence is produced on record by the prosecution to vanish the documentary evidence produced by the accused . It is necessary to note that the aadhar card, PAN card, driving license or ration card cannot be termed as the documents proving the citizenship of any person in a sufficient manner as said documents are not meant for the purpose of citizenship. The birth certificate, domicile certificate, bonafide certificate, passport etc, can be relied upon to establish the origin of any person. Even the election card can be said to be sufficient proof of citizenship as while applying for the election card or voting card, a person has to file declaration with the authority in view of form 6 of Peoples Representation Act to the authority that he is citizen of India and if the declaration is found false, he is liable for punishment. To ,my mind such declaration is sufficient to prove the citizenship unless contrary is proved by the prosecution. Here, it is visible that accused no. 2 and accused no. 3 have filed their original election cards on record. It is not the case of prosecution that the accused no. 2 and 3 have prepared fake documents. Hence, I hold that original Election Cards of accused no. 2 and 3 are sufficient to prove their nationality as an Indian. All these documents which are not rebutted by the prosecution are sufficient to show the Indian citizenship of accused persons. Hence, I hold that the said documents are justified to be relied upon. It is necessary to mention that the person may lie but the documents will never. Hence, I hold that the prosecution has failed to bring any evidence on record to establish that the documents produced by the accused are not genuine.

16] Hence, considering the discussion made above I have

arrived at the conclusion that prosecution utterly failed to prove the charges leveled against the accused persons under Rule 3 punishable under Rule 6 of the Passport (Entry into India) Rules, 1950, and under Para 3(1) of the Foreigners Order, 1948 punishable U/Sec. 14 of the Foreigners Act, 1946. Accordingly, I have answered point No. 1 and 2 in the negative.

17] **As to point No.3 :-**

In view of my negative findings as to point Nos. 1 and 2, the accused Nos. 2 and 3 deserves to be acquitted for the offence under Rule 3 punishable under Rule 6 of the Passport (Entry into India) Rules, 1950, and under Para 3(1) of the Foreigners Order, 1948 punishable U/Sec. 14 of the Foreigners Act, 1946. Hence I proceed to pass the following order :-

ORDER

- 1) Accused **No.2 Abbas Lalmiya Shaikh** and accused **No. 3 Smt. Rabiya Khatun Abbas Shaikh** are acquitted vide section 248(1) of the Criminal Procedure Code, for the offence under Rule 3 punishable under Rule 6 of the Passport (Entry into India) Rules, 1950, and under Para 3(1) of the Foreigners Order, 1948 punishable U/Sec. 14 of the Foreigners Act, 1946.
- 2) Bail bonds executed by the accused Nos. 2 and 3 U/sec. 436 of the Criminal Procedure Code are cancelled.
- 3) Accused Nos. 2 and 3 are directed to execute PR bond of Rs.10,000/- each in compliance of section 437-A of the Criminal procedure Code and it shall remain in force for the next six months

from the date of judgment.

4) Accused No. 1 Rabiul Chandmiya Mizi is reported absconding. The separate charge-sheet be filed against accused No.1.

(Dictated and pronounced in open court)

Esplanade, Mumbai.	(A. H. Kashikar)
Date : 11/02/2020	Addl. Chief Metropolitan Magistrate,
	08 th Court, Esplanade, Mumbai.

Dictated on : 11/02/2020
Signed on : 13/02/2020

SSS