

MHTH140055282023



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Duration	:	01Y.02M.04 D.

	<p style="text-align: center;"><u>IN THE COURT OF JUDICIAL MAGISTRATE</u> <u>FIRST CLASS, BHIWANDI.</u> (Presided over by Amol S. Bhosekar)</p> <p style="text-align: right;">R.C.C. No.546/2023. Exh.No.101</p>
Informant	State of Maharashtra (Through Bhoiwada Police Station)
Represented By	Ld. A.P.P. Smt.Aher
Accused	<p>1. Ibrahim Abdul Khan, Age- 29 years, Occu.: Nil,</p> <p>2. Burhan Abdul Khan, Age- 23 years, Occu.: Nil, 1 and 2, R/o. : 404, Gaykar building, old gauripada, Bhiwandi, Dist. Thane. Native: Nichintapur, Hathajari, Fatikchori, Dist. Chtigaon, Bangladesh.</p> <p>3. Mohd. Arfan Mohd. Rafiqul Shaikh, Age- 19 years, Occu.: Nil,</p> <p>4. Mohd. Sohel Mohd. Rafiqul Shaikh, Age- 27 years, Occu.: Nil, 3 and 4 R/o. : 404, Gaykar building, old gauripada, Bhiwandi, Dist. Thane. Native: Daulai Ward No.3, Monia Fukarfad,</p>

	Hathajari, Fatikchori, Dist. Chtigaon, Bangladesh. 5. Suresh Ishwarsingh Parihar, Age- 32 years, Occu.: Service, R/o. : 303, Shanti Avenue Building, Charnipada, Rahnal gaon, Bhiwandi, Dist. Thane. Native: Mama colony, Badgaon, Dist. Jalor, Rajasthan.
Represented By	Ld. Adv. Shri. J.E. Lasane for accused No.1, Ld. Adv. Shri. M.P. Goradkar for accused Nos.2 to 4 and Ld. Adv. Shri. Ajay Patil for accused No.5.

Part 'B'

Date of Offence	20/03/2023
Date of FIR	20/03/2023
Date of Charge-sheet	08/05/2023
Date of Framing of charges	06/06/2023
Date of commencement of evidence	05/07/2023
Date on which judgment is reserved	01/07/2024
Date of the Judgment	12/07/2024

-:Accused Details:-

R a n k	Name	Date of Arrest	Date of Releas e on Bail	Offences charged	Whether acquitted or convicted	Period of Detention Undergone during Trial for purpose of Section 428, Cr. P.C.

1.	Ibrahim Abdul Khan	20/03 /2023	-	Section 465, 468, 471 and 34 of I.P.C., Section 3(1), 3(2), 3(3) and 14 of Foreigners Act and Section 12 of Indian Passport Act.	Convicted	1 year, 3 months and 23 days. (480 Days)
2.	Burhan Abdul Khan	20/03 /2023	-	Section 465, 468, 471 and 34 of I.P.C., Section 3(1), 3(2), 3(3) and 14 of Foreigners Act and Section 12 of Indian Passport Act.	Convicted	1 year, 3 months and 23 days. (480 Days)
3.	Mohd. Arfan Mohd. Rafiqul Shaikh	20/03 /2023	-	Section 465, 468, 471 and 34 of I.P.C., Section 3(1), 3(2), 3(3) and 14 of Foreigners Act and Section 12 of Indian Passport Act.	Convicted	1 year, 3 months and 23 days. (480 Days)
4.	Mohd. Sohel Mohd. Rafiqul Shaikh	20/03 /2023	-	Section 465, 468, 471 and 34 of I.P.C., Section 3(1), 3(2), 3(3) and 14 of Foreigners Act and Section 12 of Indian Passport Act.	Convicted	1 year, 3 months and 23 days. (480 Days)

5.	Suresh Ishwarsingh Parihar	25/04/2023	27/04/2023	Section 465, 468, 471 and 34 of I.P.C., Section 3(1), 3(2), 3(3) and 14 of Foreigners Act and Section 12 of Indian Passport Act.	Acquitted	N.A.
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Part 'C'**LIST OF WITNESSES****A. Prosecution Witnesses**

RANK	NAME	NATURE OF EVIDENCE
PW-1	Vasant Dongar Chaure	Informant
PW-2	Manoj Hargovind Guranee	Panch
PW-3	Nandakishor Devidas Songire	Witness (Police Personal)
PW-4	Amol Vijay Salinkhe	Witness (Police Driver)
PW-5	Amit Shashikant Gaykar	Witness
PW-6	Anant Prakash Gade	Witness
PW-7	Sanjay Devram Bhoir	Witness
PW-8	Sachin Bhagwat Kuchekar	First Investigation Officer
PW-9	Ankush Pandurang Bangar	Investigation Officer
PW-10	Maheshkumar Nageshwar Margam	Witness
PW-11	Manjunath Manik Chendgond	Witness

B. Defence Witnesses**C.**

RANK	NAME	NATURE OF EVIDENCE
NA	Nil	Nil

D. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NA	Nil	Nil

LIST OF PROSECUTION/ DEFENCE / COURT- Exhibit

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exh.36/PW-1	Statement of Informant
2	Exh.37/PW-1	First Information Report
3	Exh.41/PW-2	Spot Panchanama
4	Exh.68/PW-8	Muddemal receipt
5	Exh.76/PW-9	Letter dated 22.03.2023 to Bank of India, Kanheri Branch
6	Exh.77/PW-9	Letter dated 24.03.2023 to Bank of India, Kanheri Branch
7	Exh.78/PW-9	Letter dated 31.03.2023 to Regional officer UID, Kulaba
8	Exh.79/PW-9	Letter dated 22.03.2023 to Vice president Income tax, Parel
9	Exh.92	Letter to Deputy Director UIDAI, Ranchi from D.D. UIDAI, Mumbai

B. Defence :

Sr. No.	Exh. Number	Description
NA	Nil	Nil

C. Court :

Sr. No.	Exh. Number	Description
1	Exh.24	Charge
2	Exh.25	Statement of accused No.1 U/S.313
3	Exh.26	Statement of accused No.2 U/S.313
4	Exh.27	Statement of accused No.3 U/S.313
5	Exh.28	Statement of accused No.4 U/S.313
6	Exh.29	Statement of accused No.5 U/S.313

D. Material Objects:

Sr. No.	Material Object Number	Description
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1	Article A	Vivo Mobile
2	Article B	Samsung mobile
3	Article C	Samsung mobile
4	Article D	Samsung mobile
5	Article E	Aadhar card
6	Article F	Pancard
7	Article G	Debit card of Bank of India

JUDGMENT

Accused are facing trial for the offences punishable under section 465, 468, 471 and 34 of the Indian Penal Code (**hereinafter referred to as I.P.C.**), Section 3(1), 3(2), 3(3) and 14 of Foreigners Act and Section 12 of Indian Passport Act.

2) Prosecution case, in brief, is as under :

On 20.03.2023 when the informant and his team conducted patrolling they received the secret information that some Bangladeshi citizens were living in the Gaykar building. As per the secret information informant and their team conducted the raid on the spot. They found four persons at room No.404, Gaykar building, Gauripada Bhiwandi. After enquiring they suspected them and asked them about citizenship. Accused gave evasive answers and when searched they found bogus Aadhar card, PAN card, debit card and mobiles from three accused. They brought them to the police station.

3) Thereafter the informant lodged First Information Report (hereinafter referred to as "FIR") on 20.03.2023 against the accused

No.1 to 4 at Bhoiwada police station C.R.No. 66/2023 came to be registered for offence punishable under section 465, 468, 471 and 34 of I.P.C., Section 3(1), 3(2), 3(3) and 14 of Foreigners Act and Section 12 of Indian Passport Act and after completion of investigation I.O. has filed a chargesheet against all accused persons in the court.

4) After the filing of the chargesheet and compliance of section 207 of the Code of Criminal Procedure (**hereinafter referred to as "Cr.P.C."**), my Ld. Predecessor framed charge at Exh.24 against accused persons. The charge was read over and explained to the accused in vernacular to which they pleaded not guilty and claimed to be tried.

5) The statement of accused persons U/s. 313 (1) (b) of Cr.P.C. is recorded at Exh.94 to Exh.98. The defence of the accused is that a false case is filed by the informant against them. However, no evidence was adduced by the accused in their defence.

6) Points for the determination, my findings thereon and the reasons thereof are as under.

Sr.No.	Point	Finding
1	Whether the prosecution proves that accused persons in furtherance of their common intention forged a certain documents purported to be a valuable security, namely PAN Card, Aadhar Card with intend to earn	-No.

	money or implied the contract and with intend to commit the fraud and thereby committed an offence punishable U/sec. 465 and 34 of the Indian Penal Code, 1860?	
2	Whether the prosecution proves that accused persons in furtherance of their common intention forged certain documents purported to be a valuable security, namely PAN Card and Aadhar Card intending that it shall be used for the purpose of cheating and thereby committed an offence punishable U/sec. 468 and 34 of the Indian Penal Code, 1860?	-No.
3.	Whether the prosecution proves that accused persons in furtherance of their common intention fraudulently used documents namely PAN Card and Aadhar Card which they knew or as a reason to believe at the time when used it to be a forged document and thereby committed an offence punishable U/sec. 471 and 34 of the Indian Penal Code, 1860?	-No.
4	Whether the prosecution proves that accused Nos.1 to 4 in furtherance of their common intention being the foreigner and not a citizen of India, contravened the provisions of order of direction by a Central Government in excise of the authority vesting by virtue of the provisions of section 3(1), 3(2), 3(3) of the Foreigners Act and thereby committed an offence punishable u/s 14 of the Foreigners Act, 1946?	-Yes.

5	Whether the prosecution proves that accused Nos.1 to 4 failed to produce for inspection of their passport or travel document when called upon to do so by the police thereby committed an offence punishable under section 12 of the Passport Act, 1967?	-No.
6	What Order?	As per final order.

REASONS

7) Heard Learned A.P.P. Smt. Aher for the State, Ld. Adv. Shri. J.E. Lasane for accused No.1, Ld. Adv. Shri. M.P. Goradkar for accused Nos.2 to 4 and Ld. Adv. Shri. Ajay Patil for accused No.5.

8) The “Innocence” is an accepted principle of Criminal Jurisprudence. Therefore, for proving the charge levelled against accused persons, the prosecution must prove essential ingredients of alleged sections and that too beyond reasonable doubts.

9) Learned A.P.P. for the state submitted that as per section 9 of the Foreigners Act citizenship burden is on the accused. Accused No.1 to 4 failed to prove their citizenship. Accused No.1 filed a fake voter ID card. Accused No.4 filed a fake address at the time of submitting documents for Aadhar card and PAN card. Accused No.5 aided accused No.4 for preparing and creating the fake documents. Muddemal articles were seized during the investigation. On record

there is no material to falsify the evidence of prosecution. However, evidence on record is sufficient to convict accused persons. Hence, she prayed for conviction.

10) On the other hand, the learned advocate for the accused No.1 submitted that police conducted the raid without any official permission. There are many discrepancies in the deposition of witnesses. Accused No.1 having authorised Aadhar, PAN and bank account. Sections of passport Act is not attracted to the present case. Panch witnesses are not reliable. Accused No.1 arrested only suspicion. There are several admissions given in cross examination by all witnesses. Recovery was not properly done by the Investigation Officer (**hereinafter referred to as "I.O."**). Prosecution failed to prove the case beyond reasonable doubt. Hence, he prayed for acquittal of the accused No.1. Ld. Advocate for accused No.2 to 4 argued in the same tune of ld. Advocate for accused No.1.

11) Learned advocate for the accused No.5 submitted that there is no role of accused No.5 is proved. The FIR as well as the statement of the informant does not disclose the name of accused No.5. Even a single witness did not disclose the name of accused No.5 in their statement. There are discrepancies in the statements of witnesses. Prosecution evidence is not corroborated to each other. Prosecution evidence is not sufficient to convict the accused and also fails to prove the case beyond reasonable doubt. Hence, he prayed for acquittal of the accused No.5.

As to Point No. 4 :-

12) It has come in the evidence of PW-1 Vasant Chaure (Informant) that He has been working as a Police Naik at Bhoiwada Police Station since 2019. On 20/03/2023 at 3 o'clock in the morning, he along with PSI Kuchekar, P.C. Songire, vehicle driver P.N. Salunke was doing patrolling duty in the area from old Gauripada to Sahi Hotel. They received the information from a secret informant that some Bangladeshi people were living in Gaykar building. After that, PSI called two panchas and they went to room No. 404, gaykar building.

13) He further deposed that the door was locked from inside and the window on its side was open. P.C. Somgire threw his hand through the window and opened the door latch from inside and went into the house. Accused No. 1 to 4 were sleeping. When they woke him and inquired, they gave vague answers. On taking them into confidence, they said that they came from Bangladesh. Accused No. 1 and 4 stated that they have been living in Bhiwandi for five years. Also the accused No. 2 and 3 were staying at Bhiwandi for the last two to three months. When searched, three mobile phones and eight thousand rupees in cash were seized from them and a seizure and body search panchnama was prepared. All the accused were working as plumbers. After that the accused were detained and brought to Bhoiwada Police Station and he filed a FIR against the accused. He admitted his signature on statement **Exh.36/PW-1** and FIR **Exh.37/PW-1**.

14) He admitted in cross-examination that they have not taken any written order from seniors. They have not inquired about the owner of room where accused No.1 to 4 were arrested. He also failed to say which documents were received from the accused at the time of search.

15) It has come in the evidence of PW-2 Monoj Gurani who is the panch witness that on 20/03/2023, the police called him to Bhoiwada police station for panchanama. PSI Kuchekar informed him that there is some Bangladeshi living in Bhoiwada area and he asked him to come as a panch to take action against them. Then he went with them to room No.404 on the 4th floor in a Gaykar building at Gauripada at 4.30 am. The police knocked on the door from outside but no one opened the door. After that, there was a sliding window on the side of the door and the police opened it by putting their hands and entered the room and the door was opened. There was no one in the entrance room but four people were sleeping inside. When the police questioned them, they were Bangladeshi residents. When the police asked his name, accused No.1 to 4 told his name and residential address. The police had searched the accused body and house in front of them. Police seized one mobile from accused No.1, one mobile from accused No.3 Arfan, Aadhaar card, PAN card, bank ATM card and one mobile were seized from accused No.4 Sohail and prepared panchanama before him. He identified his signature and proved Spot Panchanama **Exh.41/PW-2**. He also identified the articles 'A to G' which were seized from the accused.

16) It has come in the evidence of PW-3 Nandakishor Songire that on 20/03/2023 he was working as Police Constable at Bhoiwada Police Station. That day he was working in the investigation team. He along with P.N. Chaure, PSI Kuchekar and the driver Salunkhe were patrolling in the area of Bhoiwada police station. That time PSI Kuchekar got secret information that four foreign nationals were staying at Gauripada. PSI Kuchekar called two panchas and then they went to Gaykar Building. After knocking on the door of a room they went inside. At that time there were four people. When PSI Kuchekar inquired they gave evasive answers. They said that they are residents of Bangladesh. When searched two mobiles and Aadhar card were found and seized it before panchas and prepared panchanama. Accused were brought to Bhoiwada Police station. The investigating officer interrogated him and took his statement.

17) It has come in the evidence of PW-4 Amol Salunkhe that on 20/03/2023 he has working as Vehicle driver on MH-12-SQ-2057 Mahindra Bolero at Bhoiwada Police Station. He has accompanied on patrolling duty by PSI Kuchekar, P.N. Chaure, and P.C. Songire. That time PSI Kuchekar got information through a secret informant that there were some foreign persons living in the Gauripada area. They went to room No.404, 4th floor Gaykar building. They went inside through the window and opened the door from inside. There was a room and a kitchen adjacent to the hall. In that kitchen all the four accused were sleeping. After searched they found Aadhaar Card, PAN Card and Debit Card of accused No.4. They seized two mobiles from

accused No.4, one mobile from accused No.1 Ibrahim and one mobile from accused No.3 Arfan and prepared panchanama. After that accused brought to the police station. He identified the seized articles 'A to E'.

18) It has come in the evidence of PW-5 Amit Gaykar that he now accused No.1 to 4. He has a construction business. He has construction work at Gauripada. Accused No.1 Ibrahim was working as a plumber with him. Accused No.1 told him that he wanted a room to stay for a month. He had given room No.404 on the 4th floor of Gaykar building to him. Accused No.4 Sohail and No.1 Ibrahim were staying there. On 20/03/2023 the police came to him for enquiry and told him that two people living in room No.404 are Bangladeshis. Police enquired him the next day.

19) It has come in the evidence of PW-6 Anant Gade that he knew the accused No.5 for seven years, as he was working as a manager at the site where he was working. Accused No.5 telling him to bring labourers to the site, hence, he was going to Bhiwandi, Kalyan and other places to get labourers. Once accused No.5 required labour, he gave mobile number of accused No.4 Sohail to him. He was working as a plumber. He got information from Bhoiwada police that the accused is from Bangladesh. The police recorded his statement.

20) He admitted in cross-examination that he has not able to say on which date accused No.5 told him to bring labourers. He came

to know that the accused are residents of Bangladesh after police told him. He had never seen a Bangladeshi Aadhaar card, PAN card, and currency note with accused No.4. He also admitted that no one sees the labourers Aadhaar card, PAN card and other documents.

21) It has come in the evidence of PW-8 Sachin Kuchekar (I.O.) that from 09/04/023 to 30/08/2023 he has been working as Sub Inspector of Police at Bhoiwada Police Station. On 19/03/2023 he was working on night shift duty at Bhoiwada Police Station. On 20/03/2023 at 3.30 am when he was patrolling at Gauripada area along with P.N. Chaure, P.C.Songire, vehicle driver P. N. Salunke, he got the information that some Bangladeshis are living illegally on the 4th floor of Gaykar Building in Gauripada area. He called two panchas and fixed the spot. Went to room No.404, its door was closed. No one responded when they knocked on the door. P.C. Songire went into the room through the side sliding window and opened the door from inside. When they went through the hall at the main gate to the back room, there were four people sleeping. Waking them up and introducing them and explaining the reason for the raid. When inquired they said that they were from Bangladesh and their names were Sohail, Burhan, Ibrahim and Arafat. When they asked all the four accused to search them, they refused. Then they searched for all four accused. They got two Samsung mobiles, Aadhar card, PAN card and debit card of IDBI bank from accused No.4, one Vivo mobile from accused No.1 and one Samsung mobile from accused No.3. They seized the mobiles and documents. He

identified the articles 'A to G'. He also identified the muddemal receipt **Exh.68/PW-8**.

22) He admitted in his cross-examination that he called panchas through P.C. Chaure. After the raid he has not gone to the spot. He has not recorded statements of persons who resided at the building. He has not enquired about call details of accused persons. He also admitted that he has not received information from any Government office about fake Adhar card and PAN card.

23) It has come in the evidence of PW-9 Ankush Bangar (I.O.) that he was working in the year 2023 at Bhoiwada police station as senior P.I. On 22.03.2023. The investigation was assigned to him by order on 22.03.2023. When the investigation was in hand four accused were arrested. Among them, the accused Mohammad Sohail Rafiquil Shaikh was found to have an Aadhaar card, PAN card and Bank of India account in the Kanheri branch. Then he wrote letter **Exh.76/PW-9** on 22/03/2023 to the manager of Bank of India branch Kanheri and got the documents. Also on 24.03.2023 he wrote a letter **Exh.77/PW-9** to the manager of Bank of India branch Kanheri for the information about which documents were submitted while opening the account and got documents. Aadhaar card, PAN card and bank statement of accused Mohammad Sohail Rafiquil Shaikh were received from the bank through both the said letters.

24) He further deposed that when inquired with the accused Mohammad Sohail Rafiquil Shaikh he told that he was working as a

plumber at Jainam Enterprises, Thane. On further enquiry, the accused said that Suresh Parihar was the supervisor at that place and he helped the accused to get the Aadhaar card and PAN card and gave the mobile number of Suresh Parihar. On that basis Suresh Parihar was traced and arrested on 25.04.2023. When investigated he said that the local corporator of Patlipada, Thane, gave the resident certificate to accused Sohail. Accordingly, he called local corporator Sanjay Bhoir and investigated but he denied that. During the investigation, labour contractor Anant Gade was inquired. He said that he had taken the accused there for employment.

25) He further deposed that in order to get information about the documents submitted by the accused Mohammad Sohail Rafiqul Shaikh for obtaining Aadhaar card, on 31.03.2023 he wrote letter **Exh.78/PW-9** to Regional Officer U.I.D., Kulaba. The reply to that letter was that no individual's personal information could be given. He has sent a letter **Exh.79/PW-9** dated 22.03.2023 to the Vice President Income Tax Department, Lower Parel to get the information about the documents submitted by the accused Mohammad Sohail Rafiqul Shaikh for obtaining PAN card. According to the reply to the said letter, the accused resided at B.D.D. chwal, room No.76, Building No.31, Worli, Mumbai. On inquiry about the said room, it was found that it belongs to Mahesh Kumar Margam. Accordingly, Mahesh Kumar Margam was investigated and his detailed statement was recorded. He said that he never gave rooms to such persons. He showed the rental agreement for letting the room to other persons.

26) He has admitted in cross-examination that he has not investigated the case except accused Sohail. He did not go to the spot of incidence. He also admitted that at the time of conducting the raid there were no such orders by superiors. He also did not inquire with the Bangladesh Embassy. He did not get any documents regarding accused No.4 and 5 working at Jainam enterprises.

27) It has come in the evidence of PW-10 Maheshkumar Margam that he did not know the accused No.4 Mohammad Sohail Shaikh. Bhoiwada police inquired with him about the PAN card. He told the police that the accused are not residing at room No.76, Building No.31, B.D.D. Chwal, Worli. The said room is in the name of his wife Shital Shantaram Chandurkar. From 2018 to 2020, the tenant Uttam Bhosale was living in the said room. He had never given the said room to accused No.4 Mohammad Sohail Shaikh.

28) It has come in the evidence of PW-11 Manjunath Chendgond that in March 2023 he was working as Branch Manager at Bank of India Branch Dhamankar Naka. He does not remember that the Bhoiwada police gave a letter to him. He identified the stamp of his bank on the letter **Exh.77/PW-9**. He further deposed that they submitted documents to police on 27/03/2023. He identified the said documents as the stamp is on that. He admitted in his cross-examination that police did not take his statement.

29) Now I am dealing with the appreciation of evidence. As per section 59 of the Indian Evidence Act all facts except the contents of documents or electronic record may be proved by oral evidence. Section 60 of the said act states that the oral evidence, in all cases whatever, be direct. As per this section the witness must state that he has seen or heard the incident or he has perceived the thing by any sense. Therefore, it is necessary to scrutinise the evidence very carefully.

30) Here I would like to reproduce the provisions of Section 14 of the Foreigners Act.

14. Penalty for contravention of provisions of the Act, etc. -
Whoever. -

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

31) As per the evidence of PW-8 Kuchekar who is first I.O. in the said crime conducted raid at spot and seized two Samsung mobiles, Aadhar card, PAN card and debit card of IDBI bank from accused No.4, one Vivo mobile from accused No.1 and one Samsung mobile from accused No.3. This fact is corroborated by PW-1 to PW-4. The second I.O. PW-9 Bangar further investigated the said crime. He has written letters to various authorities but he has failed to collect the evidence that those Aadhar card and PAN card are forged documents. Prosecution also failed to prove that the said documents are forged.

32) Here I would like to reproduce the provisions of Section 9 of The Foreigners Act.

9. Burden of proof.—If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

33) As per Section 9 of the Foreigners Act, the burden of proving that he is not a foreigner is on the accused. Accused No.1 filed copy of his voter ID card, Aadhar card, PAN card and bank passbook. As per Citizenship Act that said documents cannot be considered as proof of nationality or citizenship. Hence, it cannot be considered as he is a citizen of India. Accused No.2 to 4 also failed to

produce any documentary as well as oral evidence to prove their nationality. Therefore, accused No.1 to 4 failed to discharge their burden that they got citizenship of India as per Citizenship Act. Hence, I hold that they are foreigners. Hence, I answer point No. 4 in **affirmative.**

As to point No.5:-

34) Here I would like to reproduce the provisions of Section 12 of The Passport Act, 1967.

12. Offences and penalties.

(1) Whoever-

(a) Contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him,

shall be punishable with imprisonment for a term which may extend to 2[two years or with fine which may extend to five thousand rupees] or with both.

[(1A) Whoever, not being a citizen of India,—

(a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or

(b) holds a forged passport or any travel document,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.]

(2) Whoever abets any offence punishable under 2[sub-section (1) or sub-section (1A)] shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that subsection for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence.

35) After perusing the section 12 of The Passport Act and case in hand only sub section 1(c) is applied for the present case. As per section 12- 1(c) whoever fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority. As per the case of prosecution accused No.1 to 4 failed to produce their passport or any other documents to police but as per The Passport Act, police are not the prescribed authority. Hence, offence

punishable under section 12 of The Passport Act cannot be sustained.

Hence, I answer point No. 5 in **negative**.

As to point No's 1 to 3:-

36) Ld. APP argued that the accused is not a citizen of India. Therefore, it is not possible to obtain documents like Aadhar Card, PAN card and bank account without submitting forged documents. The only inference can be drawn and which is sufficient to convict the accused that those documents were obtained on the basis of forged documents. On the other hand, learned advocates for the accused argued that an offence is a combination of *actus rea* and *mens rea*. The prosecution could not prove the fraudulent intention of the accused behind obtaining documents. Therefore, charges were not proved.

37) Considering the evidence on record it appears that the prosecution failed to prove that documents which were seized from the accused are forged. Charge on the accused was that those documents were prepared on the basis of forged documents. Except letters to authority and bank, both I.O. does not take pain to secure production of documents submitted by the accused for obtaining Aadhar card. Investigation officer has ample power to produce those documents but he failed to do so. PAN card authority provides details of documents to I.O. As per the evidence of I.O. PW-9 Bangar the accused No.4 provides address of room No.76, Building No.31, B.D.D. Chwal, Worli to PAN card authority. As per evidence of PW-10 Margam that his wife is the owner of said room and the said room

rented to one Uttam Bhosale and not to accused No.4. As per his evidence he is not the owner of that room as well as the prosecution failed to file any documentary evidence regarding this contention. As per evidence of PW-9 Bangar the local corporator of Patilipada, Thane issued resident certificate to accused No.4 for obtaining Aadhar card and PAN card but prosecution also failed to prove this fact, as the local corporator denied this fact at the time of deposition.

38) The prosecution could not bring on record documents alleged to be forged. Therefore, it failed to prove forgery of documents. Resultantly, using forged documents as genuine also could not be proved. Hence, I answer point Nos. 1 to 3 in **negative**.

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39) On perusal of prosecution evidence and reasons as to points No.1 to 3, the offence levelled against accused No.5 cannot be sustained. None of the evidence which shows the role of accused No.5 in the present crime. Hence, allegations against accused No.5 cannot be sustained and he is entitled for acquittal.

As to point No.6 :-

40) As discussed above and reasons given above, the accused No. 1 to 4 held guilty for an offence punishable under section 14 of the Foreigners Act. Hence, in answer to point No.6, I stop here to hear the accused and prosecution on the point of quantum of sentence.

Bhiwandi

(Amol S. Bhosekar)

Date :12.07.2024.

11th Jt. CJJD and JMFC,

Bhiwandi.

41) The accused No.1 to 4 are produced before me from jail. Heard accused and ld. advocates for the accused on the point of sentence. They submitted that the accused are the only breadwinner of their family. They have no criminal antecedent. Hence, leniency may be granted while imposing sentence. On the other hand ld. APP submitted that heavy punishment be imposed.

42) As to the extending benefit of probation, Section 3 and 4 of the Probation of Offenders Act, 1956 incorporated the word, “the circumstances of the case including nature of the offence”. Therefore, while resorting to provisions of Probation of Offenders Act, 1956, the circumstance of the case and nature of the offence must be such that it will be suitable and appropriate to extend the benefit of probation in order to achieve the object of reformation of offenders.

43) As discussed above, accused No.1 to 4 are not citizens of India. They lived in India without any permission as prescribed by law. Considering the nature of offence, accused are not entitled for getting benefit of The Probation of Offenders Act.

44) While deciding the quantum of punishment, the criminal antecedents, age of the accused, circumstances under which the offence is committed needs to be looked into more carefully. Section 14(a) of the Foreigners Act provides punishment of imprisonment which may extend to 5 (five) years and shall also be fine.

45) There is no record to show that the accused have any criminal antecedents. Age of the accused No.1 is 29 years, accused No.2 is 23 years, accused No.3 is 19 years and accused No.4 is 27 years. In the case of a first offender, considering the nature of the offence, manner and circumstances in which offence was committed, the balance should be maintained in reforming him and maintaining a punitive approach as well. In such a situation, I think the first offender should not be punished with a maximum term of imprisonment. The accused have been in custody since 20/03/2023.

46) During the trial, the accused was in custody from 20/03/2023 till today. Therefore, he is entitled to set off for that period by virtue of Section 428 of the Cr.P.C. Articles 'A to G' are collected by accused No.1 to 4 in India without due process of law. Therefore, those articles disposed of as per final order. Therefore, as to point No. 6, I pass the following order.

ORDER

- 1] The accused No.1. **Ibrahim Abdul Khan**, 2. **Burhan Abdul Khan**, 3. **Mohd. Arfan Mohd. Rafiqul Shaikh**, 4. **Mohd. Sohel Mohd. Rafiqul Shaikh** and 5. **Suresh**

Ishwarsingh Parihar are hereby acquitted vide section 248(1) of the Code of Criminal Procedure, 1973 of the offence punishable under Section 465, 468, 471 and 34 of the Indian Penal Code, 1860.

- 2] The accused No.1. **Ibrahim Abdul Khan**, 2. **Burhan Abdul Khan**, 3. **Mohd. Arfan Mohd. Rafiqul Shaikh** and 4. **Mohd. Sohail Mohd. Rafiqul Shaikh** are hereby acquitted vide section 248(1) of the Code of Criminal Procedure, 1973 of the offence punishable under Section 12 of the Passport Act, 1967.
- 3] Accused No.1. **Ibrahim Abdul Khan**, 2. **Burhan Abdul Khan**, 3. **Mohd. Arfan Mohd. Rafiqul Shaikh** and 4. **Mohd. Sohail Mohd. Rafiqul Shaikh**, are hereby convicted vide section 248(2) of the Code of Criminal Procedure, 1973 of the offence punishable under Section 14 (a) of the Foreigners Act, 1946.
- 4] The accused No.1 to 4 are sentenced to suffer simple imprisonment for 1 (One) year 4 (Four) months and 10 (Ten) days and to pay a fine of Rs. 10,000/- (Ten Thousand only) each and in default to suffer simple imprisonment for 1 (one) month.
- 5] Set off be granted to the accused No. 1 to 4 from 20/03/2023 vide Section 428 of the Cr.P.C.

- 6] Seized muddemal articles and documents are worthless. Hence, disposed of as per rules after the appeal period is over.
- 7] Seized muddemal articles mobile be auctioned and amount credited to the government after the appeal period is over as per rules.
- 8] Copy of this judgment be sent to Bhoiwada Police Station and officer in-charge of Bhoiwada police station is directed to take appropriate steps for deportation of accused No.1 to 4 out of India, after sentence is over.
- 9] Copy of this judgment is given to the accused No.1 to 4 free of cost.

Bhiwandi

(Amol S. Bhosekar)

Date :12.07.2024.

**11th Jt. Civil Judge Junior Division
and Judicial Magistrate First Class
Bhiwandi.**

-: CERTIFICATE :-

“I affirm the contents of this P.D.F. file order is the same word for word as per original order”.

Name of Jr. Clerk	:	Mr. J.R. Patil
Name of the court	:	Amol S. Bhosekar, 11 th Jt. C.J.J.D. & J.M.F.C., Court, Bhiwandi
Date	:	12/07/2024
Order signed by presiding officer on	:	12/07/2024
Order uploaded on	:	12/07/2024