

In the court of the Principal Sessions Judge, Tiruppur

Present: Thiru. Swarnam J. Natarajan, M.L.,
Principal Sessions Judge, Tiruppur

Thursday, the 15th day of December, 2022

(Thiruvalluvarandu 2053, Subakiruthu Andu, 29th day of Karthigai month)

Sessions Case No.187 / 2022

(CNR No.TNTI18 – 003813 – 2022)

(C.C.No. 222/2021 of the Judicial Magistrate, Avinashi
Cr.No.2928/2021, Thirumuruganpoondi (Anupparpalayam) Police
Station)

Name of the accused	:	1. Shimul Gazi, 29, S/o.Shukor Gazi 2. Mohammed Saiful Islam, 40, S/o. Mohammed Munurali 3. Mannan Mollal, 31, S/o.Jeyat Ali Mollal
Charges leveled against the accused	:	<u>1) u/s.417 IPC (A1 and A2)</u> Cheating punishable u/s.417 of IPC
		<u>2) u/s.341 IPC (A2):</u> Wrongful restrained punishable u/s.341 IPC
		<u>3) u/s.323 IPC (A1 to A3):</u> Voluntarily causing simple hurt punishable u/s.341 IPC
		<u>4) u/s.506(i) IPC (A2):</u> Criminal intimidation punishable u/s.341 IPC

Dated: 15.12.2022

Principal Sessions Court, Tiruppur

	:	5) <u>u/s.3(2)(c) r/w.14 of Foreigners Act, 1946 (A1 to A3)</u> Commit to enter into India without valid Visa or valid documents punishable u/s.3(2)(c) r/w.14 of Foreigners Act, 1946.
Plea of the accused		Not guilty

Judgment : **In the result**, the accused person A2 is found guilty for the offence u/s.3(2)(b) r/w.14(A) (b) of Foreigners Act and he is convicted for the offence u/s.3(2)(b) r/w.14(A) (b) of Foreigners Act, 1946 and the accused person A2 should be treated as victim and by following the guidelines of the Union of India, this court shall treat them as victim and is not inclined to impose them further sentence and already undergone for the period from 24.06.2021 to 15.12.2022 is ordered to be set off and they were ordered to be let out from the Prison and the Superintendent of Police / Commissioner of Police, Tiruppur may in co-ordination with Ministry of External of Affairs, Union of India, deport him to Bangladesh as he is no more required in this case.

Till the process of deportation be initiated the accused person A2 be detained in the Prison where presently he is kept by.

Further, the accused persons are not found guilty for the offence charged against A1, u/s.417, 323 IPC and Section 3(2)(c) r/w.14 of Foreigners Act, 1946, A2, u/s.417, 341, 323, 506(i) IPC and A3, u/s.323 IPC and Section 3(2)(c) r/w. 14 of Foreigners Act and they are acquitted from the said charges.

The Material Objects produced by the prosecution in PR.No.68/2022 in this case, MO Nos. 1 and 2 (Samsung Galaxy J7 Phone with sim and Real Me phone with Sim) are ordered to be

returned to the accused A1 / Shimul Gazi, MO No.3 / Mobile Star C1 phone with Sim is ordered to be returned to the accused person A2 / Mohammed Saiful Islam, after the appeal time or after the disposal of the appeal, if any, whichever is earlier.

This case was coming for final hearing on 14.12.2022 before me in the presence of Thiru.S.Kanaga Sabapathy, Public Prosecutor, for the District on behalf of the State, M/s.Murali Law Firm for the accused A1 to A3, upon hearing both side arguments, upon perusing the evidence and documents, the case upon consideration till this date, this Court delivered the following:

J U D G M E N T

The Inspector of police, Annupparpalayam Police Station in Crime No.2928/2021 had laid final report against the accused persons namely, Shimul Gazi, 30, S/o.Shukor Gazi, Mohammed Saiful Islam, 41, S/o.Mohamed Munural and Mannan Mollal, 32, S/o.Jeyat Ali Mollal alleging that the complainant Manikandan was a resident of Rakkiyapalayam, Ammapalayam, Ganapathy nagar and the accused persons A1 to A3 had taken out the house of the complainant for rent assuring that they would produce necessary document for stay in India and mislead the complainant as if they had obtained valid permission to stay the India and taken out the house for rent and even after demand, the accused persons failed to produce valid documents nor vacant the premises and restrained the complainant, abused him and threatened him with dire consequences and assaulted him and caused simple injuries on his cheek. Thereby, the accused persons had committed the offences punishable u/s.417, 341, 323, 506(i) IPC and Section 3(2)(c) r/w. 14 of Foreigners Act, 1946.

2) On being satisfied with the prima facie case, the learned Judicial Magistrate No.III, Tiruppur was pleased to take cognizance of the offence u/s.417, 341, 323, 506(i) IPC and Section 3(2)(c) r/w. 14 of Foreigners Act, 1946 as C.C.No.378/2021.

3) On production of the accused persons A1 to A3 before the trial court, free copies of police records were furnished to them as contemplated under section 207 of Cr.P.C. and after hearing both, the charges were framed against the accused person A1, u/s.417, 323 IPC and Section 3(2)(c) r/w. 14 of Foreigners Act, 1946, A2, u/s.417, 341, 323, 506(i) IPC and Section 3(2)(c) r/w. 14 of Foreigners Act, 1946 and A3, u/s.323 IPC and Section 3(2)(c) r/w. 14 of Foreigners Act, 1946 and by explaining the contents of the charge with the accused persons in their known language of Hindi through the translator arranged by the Public Prosecutor. The accused persons denied the charge and claimed to be tried. After that the case was transferred by the Judicial Magistrate No.III, Tiruppur to the Judicial Magistrate, Avinashi on the point of jurisdiction and the same was taken on file as CC.No.222/2021.

4) In order to bring home the charge against the accused persons, on the side of the prosecution, PWs.1 to 11 were examined and Exs.P1 to P17 were marked. After that, the learned Judicial Magistrate, Avinashi was please to commit the case in C.C. No.222/2021 to this court as the case is exclusively triable by the Court of Sessions. The case was taken on file as SC.187/2022. In continuation of the said witnesses, the prosecution has examined PWs.12 and 13 and Exs.18 to 30 and MO Nos.1 to 3 were marked on the side of the prosecution before this court

5. The case of the prosecution in brief is as follows:

The accused persons A1 to A3 had taken out the house of the complainant PW1 / Manikandan for rent assuring that they would

produce necessary document for stay in India and mislead the complainant as if they had obtained valid permission to stay the India and taken out the house for rent and even after demand, the accused persons failed to produce valid documents nor vacant the premises. On 23.06.2021, at about 10.00 to 11.00 a.m., when PW1 demanded the same, the accused restrained him, abused him and threatened him with dire consequences and assaulted him and caused simple injuries on his cheek. Hence, PW.1 / Manikandan, the complainant had given a complaint, Ex.P.1 before the respondent. PW2 / Ashok kumar, PW3 / Thiravidaselvi, PW 4 / Krishnamoorthy, PW.5 / Jegadeeshwaran, who had seen the occurrence and the other witnesses for scene mahazar, observation mahazar and confession mahazar.

On the basis of complaint given by PW1, the Sub Inspector of Police, PW11 had registered F.I.R / Ex.P.17 as case in Crime No.2928/2021. PW13 / Kandasamy, the inspector of Police had taken up the case for investigation and visited the place of occurrence and prepared observation mahazar, Ex.P.2 and rough sketch, Ex.P.18. On 24.06.2021, he arrested the accused and obtained confession statement from the accused persons in the presence of witnesses. The admitted portion of the confession statement given by the A1 to A3, Exs.P.19 to 21 respectively and seized the Cell phones / MO Nos.1 to 3 under cover of mahazars, Exs.P.22 and 22 and the same was produced before the court through Form-91, Exs.P.25 and 26. After altering the Section of law, Ex.P.30, after completing of investigation, he laid final report against the accused persons for the offences punishable u/s.417, 341, 323, 506(i) IPC and Section 3(2)(c) r/w. 14 of Foreigners Act, 1946.

6) When the accused persons were questioned with regard to the incriminating circumstances made out against them in the evidence of the

prosecution witnesses under Section 313 (1) (b) Cr.P.C. The accused A2 had admitted his guilt and pleaded that he is innocent, Bangladesh citizens, who were deceived by touts in Bangladesh assuring them to get good employment with wages in Tiruppur and believing their words, they had illegally come to India and reached Tiruppur and found that he was cheated and the assured pay was not paid and he was caught hold of by the police and he is in custody from 24.06.2021 to till date i.e., 18 months. Whereas A1 and A3, who denied the charges and claimed themselves to be an Indian citizens and claimed to be tried.

7) A2 had admitted himself to be a citizen of Bangladesh and he pleaded innocence and claimed that out of poverty, he had come to India due to the inducement made by touts in Bangladesh on the assurance that he would get good salary in Tiruppur and believing their words, he spent huge amount and he come down to Tiruppur and now been in prison for the past 18 months.

8) The change in the attitude of the accused person A2 with respect to his sudden admission is ascertained through the legal aid counsel and the earlier counsel, who represented A2 had reported no further instructions from A2. The accused A2 had reported to the court and mislead the court that he is an Indian Citizen and prolonged the trial.

9) Considering the fact that the accused persons are being victims of human trafficking, this court finds that due to his age factor, due to the fact that he is in custody for quiet long time and there were nobody to take care of him in Bangladesh and due some ill-advise in the prison or by his counsel, he had taken such plea claiming himself to be Indian Citizenship, which had been falsified by documents and oral evidence of the witnesses. Therefore, this court is not intend to take severe action against the accused A2 though he had mislead the court and

this court is inclined to show the same lenient view on A2 on par with other accused persons. Hence, no further action is taken against A2 for producing false documents.

10) Considering the fact that the Section 8 of the Foreigners Act places burden of proof on the accused persons to discharge that they belonged to India and or they have come under valid document. In the absence of evidence being let in by the accused persons, the court shall presume and draw adverse inference against the accused persons for having violated the provisions of Foreigners Act. Therefore, this court finds that the prosecution had proved the charges against the accused A2 for the offence u/s.3(2)(b) r/w.14(A) (b) of Foreigners Act, 1946 as P.R.C. The offence charged against the accused person A2 u/s.3(2)(c) r/w.14 of Foreigners Act, 1946 is recalled and he is liable to be convicted for the offence punishable u/s.3(2)(b) r/w.14(A) (b) of Foreigners Act, 1946 as P.R.C.

11) Trafficking in human beings for the purpose of labour exploitation is one of the most challenging aspects of modern days slavery. It is challenging on many accounts because differences arising practice in the interpretation and application of labour standards and in defining labour exploitation because victim prefers not to lodge complaints or stand as witnesses as they are often dependent on trafficker for work and housing and not least because combating trafficking for the purpose of labour exploitation requires co-ordinated action between the States, Civil Society, Trade Unions and Private Sectors.

12) Section 370 IPC prohibits human trafficking and provides,

Section 370 IPC: “Buying or disposing of any person as a slave.—Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his

will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

13) Similarly, the law of Bangladesh, Section 3 of Prevention and Suppression of Human Trafficking Act, 2012 provides that human trafficking means, the selling or buying, recruiting or receiving, deporting or transferring, sending or confining or harbouring, either inside or outside of the territory of the Bangladesh of any person for the purpose of sexual exploitation or oppression, labour exploitation or any other form of exploitation or oppression by means of threat or use of force, or deception or abuse or other types of vulnerability or giving or receiving money or benefit to procure the consent of a person having control over him or her.

14) The Government of India after conducting study on the impact of human trafficking of migrant labourers from Bangladesh had classified trafficking in persons with respect to consent, exploitation and trans-nationality. The table is provided below for better appreciation;

Consent	The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.
Exploitation	Smuggling ends with the migrants' arrival at their destination, whereas trafficking involves the ongoing exploitation of the victim in some manner

	to generate illicit profits for the traffickers. From a practical standpoint, victims of trafficking also tend to be affected more severely and to be in greater need of protection from re-victimisation and other forms of further abuse than are smuggled migrants.
Transnationality	Smuggling is always transnational, whereas trafficking may not be trafficking can occur regardless of whether victims are taken to another State or only moved from one place to another with the same state.

15) The present case falls under the second category of exploitation. Therefore, the accused persons would fall under the category of victims of exploitation of human trafficking. The circular of the Government of India Ministry of Home Affairs Foreigners Division Official Memorandum, dated 2011, provides that victims and persons actually involved in human trafficking should be treated differently by the police authorities. Whereas in the present case, the investigating officer had not taken into consideration, the circular of the Government of India as well as guidelines given by the Government of India while dealing with human trafficking of migrant labourers from Bangladesh.

16) As for as the accused person A2 is concerned, it could be seen that he was exploited and brought to India by deceit and he was not paid his legitimate salary, which was due to him and he was made to stay in the locality of Avinashi illegally. Therefore, he should be treated as victim and by following the guidelines of the Union of India, this court shall treat him as victim and is not inclined to impose him further

sentence as provided made the statute and he already undergone period by the accused person A2 is ordered to be set off and he was ordered to be let out from the Prison and the Superintendent of Police, Tiruppur may in coordination with Ministry of External of Affairs, Union of India, deport them to Bangladesh as he is no more required in this case.

17) As for as A1 and A3 are concerned, they claimed themselves to be citizens of India. They produced their original passports issued by the passport Authority of India as documents to substantiate their claim during question. In order to verify the said fact, the passport Authority Officer from West Bengal was examined on the side of the prosecution as PW12 / Ashish Mitta, he had stated that he verified the passports issued to Mannan Mulla and Simul Gazi, dated 22.06.2015 and 06.10.217 respectively in their office by following the usual course of the verification and found that the District police Authority of West Bengal of North 24 Barganas, had not noticed any adverse report against the individuals and had approved the issuance of the passport. Thereby, their office, in the routine course had processed the application in their software and issued their passport. So far, they have not received any adverse notice against the individual either from the police or from anybody with respect to their claim of Indian citizens as well as regarding issuance of passport by their office.

18) In the event of such complaint being received, they would follow the usual course of action by hearing the individuals and would take further action. The passport officer do claim that he had not received any intimation from the police with respect to their passports. To answer the said claim made by A1 and A3, PW13, the investigating officer while he was examined in chief, during his cross examination by the court had stated that he had not verified any documents to ascertain that the accused

persons A1 and A3 belongs to Bangladesh. The cards produced by the accused persons were not verified either with Bangladesh Government or with Indian Government and he had not taken pains to verify the authenticity of the said documents. He do not know whether the accused persons A1 and A3 had been issued with passport of Calcutta, he had not taken any steps to verify whether the accused persons real belong to Bangladesh. No action has been taken on the house owner, who had let out the premises to the accused persons without prior intimation to the local police station. Similarly, the investigating officer claimed that the accused persons were working in CTC Banian Company and no action had been taken against the said company so far for employment of the said workers illegally.

19) With respect to the confession statement, the witnesses had deposed that the confession statements were given by the accused persons in hindi, the same were translated through translator in Tamil and they attested the same. However, the confession statement was not read over to them again in Hindi and their signatures were not obtained. The formalities while recording the confession statement has not been complied with in the present case.

20) PW.1 / Manikandan, the complainant, PWs 2, 3, 4 independent witnesses, who had seen the occurrence and the other witnesses for scene mahazar, observation mahazar and confession mahazar. The complainant had not claimed himself during his examination that he was assaulted by the accused person nor threatened with dire consequences. According to the complainant the accused persons had spoken in Hindi and they do not know the language. Therefore, the question of threat caused to the complainant, restrained him and abusing with filthy languages would never arises. Therefore,

the charge u/s.341, 323, 506(i) IPC has not been made out against the accused persons through the prosecution witnesses.

21) In the present case, both the provisions have been violated by the so called agents, the companies and middle man, who have deceived the accused persons under false promise and brought the accused persons to Indian Territory without valid Passport, Visa, documents and made them to stay in India in Tiruppur illegally and they extracted work from them without paying their due wages. Therefore, the investigating officer having noticed the said fact from the confession statement of the accused persons had conveniently omitted to prosecute the company as well the care taker and tout who have provided accommodation of the accused persons for their stay and employment in India and had chosen to charge only the accused persons, who being the victim of human traffic.

22) The investigating officer had not taken pains to verify the copy of Bangladesh National Identity card of the accused persons produced by them to ascertain the fact that the accused persons really belonged to Bangladesh and their national identity card produced before them was issued by Bangladesh Government.

In the result, the accused person A2 is found guilty for the offence u/s.3(2)(b) r/w.14(A) (b) of Foreigners Act and he is convicted for the offence u/s.3(2)(b) r/w.14(A) (b) of Foreigners Act, 1946 and the accused person A2 should be treated as victim and by following the guidelines of the Union of India, this court shall treat them as victim and is not inclined to impose them further sentence and already undergone for the period from 24.06.2021 to 15.12.2022 is ordered to be set off and they were ordered to be let out from the Prison and the Superintendent of Police / Commissioner of Police, Tiruppur may in co-ordination with

Ministry of External of Affairs, Union of India, deport him to Bangladesh as he is no more required in this case.

Till the process of deportation be initiated the accused person A2 be detained in the Prison where presently he is kept by.

Further, the accused persons are not found guilty for the offence charged against A1, u/s.417, 323 IPC and Section 3(2)(c) r/w.14 of Foreigners Act, 1946, A2, u/s.417, 341, 323, 506(i) IPC and A3, u/s.323 IPC and Section 3(2)(c) r/w. 14 of Foreigners Act and they are acquitted from the said charges.

The Material Objects produced by the prosecution in PR.No.68/2022 in this case, MO Nos. 1 and 2 (Samsung Galaxy J7 Phone with sim and Real Me phone with Sim) are ordered to be returned to the accused A1 / Shimul Gazi, MO No.3 / Mobile Star C1 phone with Sim is ordered to be returned to the accused person A2 / Mohammed Saiful Islam, after the appeal time or after the disposal of the appeal, if any, whichever is earlier.

Dictated to the Steno-Typist, typed by her in the computer, corrected and pronounced by me, in the open court, this the 15th day of December, 2022.

**PRINCIPAL SESSIONS JUDGE,
TIRUPPUR.**

**LIST OF WITNESSES EXAMINED ON THE SIDE OF
PROSECUTION :-**

P.W.1	02.12.2021	Manikandam, the Complainant, the then Inspector of Police, Anupparpalayam Police Station
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Dated: 15.12.2022

Principal Sessions Court, Tiruppur

P.W.2	02.12.2021	Ashok kumar, eye witness
P.W.3	02.12.2021	Thiravidaselvi, eye witness
P.W.4	02.12.2021	Vasanth, Observation Mahazar witness.
P.W.5	16.12.2021	Jagadeeshwaran, Observation Mahazar witness.
P.W.6	16.12.2021	Sathishkumar, Confession statement & Seizure Mahazar witness.
P.W.7	16.12.2021	Thiyagarajan, Confession statement & Seizure Mahazar witness.
P.W.8	16.12.2021	Thirupathi
P.W.9	23.12.2021	Saripulislaammulla
P.W.10	23.12.2021	Sakthivel
P.W.11	17.08.2022	Jayachandran, Sub Inspector of Police, Thirumuruganpoondi P.S.,
P.W.12	24.11.2022	Ashish Mitta, Regional Passport officer of Kolkatta.
P.W.13	13.12.2022	Kandasamy, Inspector of Police, Tirumuruganpoondi P.S.,

LIST OF EXHIBITS MARKED
ON THE SIDE OF PROSECUTION :-

Ex.P1/PW.1	02.12.2021	Complaint.
Ex.P2/PW.4	02.12.2021	Observation Mahazar
Ex.P3/PW.5	16.12.2021	Signature of PW5 in Observation Mahazar
Ex.P4/PW.6	16.12.2021	Signature of PW6 in Confession statement of A1
Ex.P5/PW.6	16.12.2021	Signature of PW6 in Confession statement of A2
Ex.P6/PW.6	16.12.2021	Signature of PW6 in Confession statement of A3

Ex.P7/PW.6	16.12.2021	Signature of PW6 in Seizure Mahazar (M.O.1 and 2)
Ex.P8/PW.6	16.12.2021	Signature of PW6 in Seizure Mahazar (M.O.3)
Ex.P9/PW.6 (Series)	16.12.2021	Signature of PW6 in Mahazar (Screen shot of Google time line)
Ex.P10/PW.7	16.12.2021	Signature of PW7 in Confession statement of A1
Ex.P11/PW.7	16.12.2021	Signature of PW7 in Confession statement of A2
Ex.P12/PW.7	16.12.2021	Signature of PW7 in Confession statement of A3
Ex.P13/PW.7	16.12.2021	Signature of PW7 in Seizure Mahazar (M.O.1 and 2)
Ex.P14/PW.7	16.12.2021	Signature of PW7 in Seizure Mahazar (M.O.3)
Ex.P15/PW.7 (Series)	16.12.2021	Signature of PW7 in Mahazar (Screen shot of Google time line)
Ex.P16/PW.10	23.12.2021	Letter submitted by PW10 (Xerox copy of Aadhar and LLR)
Ex.P17/PW.11	17.08.2022	FIR
Ex.P18/PW.13	13.12.2022	Rough Sketch
Ex.P19/PW.13	13.12.2022	Admitted portion of Confession statement of A1
Ex.P20/PW.13	13.12.2022	Admitted portion of Confession statement of A2
Ex.P21/PW.13	13.12.2022	Admitted portion of Confession statement of A3
Ex.P22/PW.13	13.12.2022	Seizure Mahazar (MO Nos.1, 2)
Ex.P23/PW.13	13.12.2022	Seizure Mahazar (MO No.3)
Ex.P24/PW.13	13.12.2022	Mahazar (Screen shot of Google time line)
Ex.P25/PW.13	13.12.2022	Form 91 (M.O.1 and 2)
Ex.P26/PW.13	13.12.2022	Form 91 (M.O. 3)
Ex.P27/PW.13 (series – 8 Nos)	13.12.2022	Document of A1 and A3 (Aadhar of A1, Driving license, PAN card, KVB bank ATM,

		Pantham bank ATM, Aadhar of A3, Indusind bank ATM)
Ex.P28/PW.13	13.12.2022	Bangladesh National ID card of A2 - Xerox
Ex.P29/PW.13	13.12.2022	Bangladesh Passport of A2 - Xerox
Ex.P30/PW.13	13.12.2022	Section Alteration Report

**List of Material documents marked
on the side of prosecution :-**

MO No.1 / PW.13		Samsung Galaxy J7 Phone with SIM – Seized from A1 (Shimul Gazi)
MO No.2/ PW.13		Real Me phone with SIM -Seized from A1 (Shimul Gazi)
MO No.3 / PW.13		Mobile star C1 Phone with SIM - Seized from A2 (Mohamed Saiful Islam)

**LIST OF WITNESSES, DOCUMENTS
AND MATERIAL OBJECTS ON THE
SIDE OF DEFENCE: NIL.**

P.D.J., Tiruppur.

Fair/Draft/Copy of Judgment
S.C. No.187 / 2022
Dated:15.12.2022
P.D.J. Court, Tiruppur.