

M.C.O.C. SPECIAL CASE NO. OF 21/06

DATE: 6TH OCTOBER, 2010

EXT.No.633

DEPOSITION OF WITNESS NO.49 FOR THE PROSECUTION

I do hereby on solemn affirmation state that:

My Name : Amir Karamat Khan

Age : 39 years

Occupation : Estate Agent

Res. Address : Flat No. 004, Poonam Park, D' Wing, Hyderi Chowk,
Naya Nagar, Mira Road (E), Dist.Thane

EXAMINATION-IN-CHIEF BY SPP RAJA THAKARE FOR THE STATE.

1. My office of estate agent is in Shop No.3, Poonam Sagar Building, Kaynath Estate, Mira Road(E). I know estate agent Hashimbhai and Gulam Ali. In February 2006 Hashimbhai phoned me and asked me whether I had any flat with me for giving on rent. I told him that I know of a flat which was with another agent Gulam Ali. This flat was in Flat No. 101, A' Wing, Poonam Park, Naya Nagar, Hyderi Chowk, Mira Road. Then Hashimbhai told me that he had a customer with him and whether he should bring the customer to me. I asked him to do so saying that I will call for the keys of

the flat. The owner of that flat was Khurshidbegum Ayazuddin. Hashimbhai came with the party to my office and I took them to the flat. The name of the customer was Mohd. Irshad Mohd. Kasam. He wanted the flat for eleven months. The deposit was agreed at Rs. 20,000/- and the rent at Rs. 3,000/- per month. The flat was agreed to be rented out from February 2006. The party approved the flat and then we returned to the office. Then I phoned Gulam Ali and told him about it and I told him to tell the owner to come for the agreement.

2. Then the owner was called. An agreement was prepared, it was notarized. Signatures and photographs of the owner and the party were put on the agreement. Then we went to the Kanakiya Police Station for no objection. Agreement was executed on 01/02/06 and we had gone to the police station on that day, but the police were busy in bandobast. Therefore, again we went on 11/02/06.
3. The rent used to be deposited in my office. The owner used to come to my office and take the rent. In June 2006 the owner phoned me and told me that some other persons are staying in her flat. Therefore, along with her, I and Kasambhai, the secretary of that building society, went to that flat. A bearded person, a woman and two children were in the flat. The owner lady

asked them as to where the person to whom she had rented the flat was. They told her that, that person had gone out of station and would return in four-eight days. I do not know who that person was.

4. Rent was deposited regularly upto June 2006. Thereafter, the flat was closed and rent stopped coming. I had seen the bearded person in that flat. I will be able to identify him. (Witness looks around the court room and points to the accused no.13 who is sitting in the dock. He is made to stand up and tell his name, which he states as Asif Khan Bashir Khan). He is the same person. I will be able to identify the copy of the agreement. Zerox true copy of the agreement now shown to me is the same. It bears the facsimile of my signature on the information form given to the police. (It is marked as **Art-264**).

5. I was called by the ATS in connection with this transaction and they had inquired with me. In the office of the ATS I came to know the name of that person as Asif Khan Bashir Khan. Police took my statement.

Cross-examination by Adv Wahab Khan for A/2, 7, 10 & 13

6. I do the work of estate agent since eight years. It is true that as per law it is necessary to register a leave and licence agreement. I had the experience of work as an estate agent since five-six years before 2006.

During this period I have done this type of work and even of sale and purchase of property many times. It is not true that Mira Road is a sensitive area. It is true that if police suspect some flat that is closed for long, then they approach the secretary of that building society or the concerned estate agent. It is true that police open the flat in the presence of such persons by opening or breaking the lock and after inspecting the flat they leave, if there is nothing untoward. It is true that the police try to contact the owner to obtain the key if the flat is locked by calling him on the phone number that is mentioned in the intimation. The secretary of the building society and the estate agents also have the phone number of the owner. There are many key-makers in Mira Road. Normally, the lock that is put on the flat has three keys. If the key of a flat owner is lost, the key-maker is called and he prepares the key and opens the lock. It is true that the key-maker does not ask for the documents of possession or ownership of the flat. However, he does inquire around about that person's genuineness. It is not true that if police suspect something they directly go to the flat concerned. It is true that the police, ATS officers or crime branch officers directly go to a flat, which they suspect, without asking the chairman, secretary of that building society or the estate agent. It is true that there are security persons at the gates of

building societies and they maintain registers for visitors. I do not know whether the police, ATS or Crime branch people do not make entry in such register.

7. The owner of the concerned flat collected rent from me lastly in June, 2006. There was no fixed date for paying the rent. I do not remember whether the last rent was of April, May or June, 2006. The owner used to come personally to collect the rent. After the agreement was executed, I went to that flat for the first time in June, 2006 with the owner. My office is closed on Monday. I cannot tell the date or day on which I had gone to the flat with the owner. I had gone on a working day and not on a holiday. We went in the afternoon at about 2.30 or 2.45 p.m. It was a working day. It was probably in the second week of June. The owner had not come to my office. She had phoned me that she is coming on that day. She had come to the building directly. When I reached the building, she was present. Secretary Kasambhai and the owner's sister were also present. They were waiting for me on the ground. The secretary and the owner told me that some other persons are staying in the flat. The owner came to know from the secretary. The secretary did not tell the owner in my presence as to how he came to know that some other person is staying there.

8. The person Mohd. Irshad who had come for taking the flat on rent, had a wife and one child, but I do not know whether it was a son or daughter. I cannot say about the age of that child, whether he was in the lap of his mother or he was on his legs or he was about 16-18 years old. When he had come, I had told him clearly that an agreement will have to be executed and NOC will have to be taken from the police station. He did not take any objection and he gave his and his wife's photographs. He also came with me to the police station. The police had verified his identity from the documents that he had and then they had told us that the documents are clear and we can proceed with the transaction. No person of that building ever complained to me about that person. If a person gives some trouble, the owner, the secretary and the other persons of that building question us about such a person. These persons had not complained about the behavior of Mohd. Irshad.

9. I did not think of complaining to the police before going to the flat with the owner in the second week of June, 06. I am saying that I had gone in the second week of June, 06 on the basis of my memory. One will require one hour from Poonam Park in Mira Road by train to reach Lokhandwala Complex in Kandivali. For the same distance one will require fifteen

minutes more by car. It did not happen that I had gone in May or July, 06 to the flat with the owner.

10. I did not have any talk with the inmates of the flat. I did not enter the flat. We did not call any person outside the flat. I do not know for how much time the owner was inside the flat. I and the secretary did not go inside the flat, because it was the flat of somebody else. The owner told me what talk she had inside. I did not verify personally. It is not true that the tenant had stopped paying rent from August, 2006. It did happen that the tenant had stopped paying rent from August, 2006 and when I and owner went there we found the flat locked. I had stated so to the police.

11. The ATS police did not ask me to describe Mohd. Irshad or his wife or the person who was staying there. I did not do so on my own. I met the owner of the flat when I was called at the office of the ATS. During this period I had no talk with her. She did not complain to me. I meet the secretary of that society often. I met him at the ATS office also. He did not speak bad words to me and did not complain. I had asked him for what he was called and he told me that it was in connection with that flat. The owner also similarly told me.

12. I do not know whether the accused no. 13 was working at

that time in the Lokhandwala complex at Kandivali. I do not know whether his duty hours were from 9.30 a.m. to 6.00 p.m. I do not know whether he was present regularly on duty during the entire month of June except Sundays. The secretary stays in my complex of buildings. I do not remember whether the owner of the flat had told me in the last week of June 2006 that some other person is staying in her flat. On 08/10/06 the secretary had not contacted me in connection with this flat, had not asked me to come to the flat, had not told me that he had gone to the flat. He had told me that police have come. He had phoned me about it. I was not called at the flat. I cannot tell the time when I was called. It was in the afternoon. I had gone to the society. Other people of the society had gathered there. Before my arrival police had left. I may have gone at about 3.30 or 4.00 p.m. There were three-four persons of the society there. The secretary did not take me to the flat. He told me that police had gone. I did not see any police there. I was there for five ten minutes and then I left. The owner was not there. The secretary did not ask me about going to the ATS office.

13. I do not remember the exact time when I went to the office of the ATS. I cannot say for how much time I was there. I cannot say whether the police inquired with me or the secretary or the owner first. I

cannot tell how much time was required for recording the statement. I had gone to the Kalachowki office. The accused no. 13 was not sitting there. The officers said that they would show the accused to me, but I told them that it is not necessary. They did not show me any accused. I had not seen the accused no. 13 there. Police showed his photograph to me. It did not happen that police showed me one person and asked me whether he was residing in that flat and I identified him as brother of Mohd. Irshad. I had not stated so to the police. If it is so written in my statement, then it is correct. Police showed me one photograph. I was shown photographs of many persons. I cannot tell how many photographs were shown.

14. I do not know whether the watchman of my building had come to the office of the ATS. I did not see him there. There is one big gate and one small gate to our society. Only one is open at one time. Watchman sits near the open gate. There is a visitors book with him. Outside persons make entry in that book. It is maintained datewise and the time, name of the visitor and the flat where he goes, is mentioned. All visitors have to make an entry in that book. I do not know whether police are exempted from making such entry.

15. Our society is a registered housing society. Account books

are maintained by the secretary. Once a person takes any premises on leave and licence, it is not necessary for him to make entry in the visitors book. The watchman knows such persons. I, the secretary and the owner of the flat had not checked the visitors book to ascertain who that man is and his movements. I did not go with the secretary to the office of the ATS. I do not know whether the secretary was having the visitors book with him at the ATS office. I was not an office bearer of the society. I do not know whether the visitors book of 2006 is maintained.

(Deferred to 11/10/10 as court time is over).

Date:- 06/10/10

**(Y.D. SHINDE)
SPECIAL JUDGE**

Date : 11/10/10

Resumed on SA

16. (Ld Adv submits that he calls upon the prosecution to make a

statement whether Mohd. Irshad Mohd. Kasam is an accused or a witness. Ld SPP makes a statement that he is neither an accused nor a witness). Police did not inquire with me about Mohd. Irshad. They did not show me his photograph. I did not ask for his photograph. I did not go with the police and show them the place where the said Mohd. Irshad stays. Mohd. Irshad had given his phone number and permanent residential address. I now again say that he had also given the address where he last resided. I did not try to contact him by letter about the flat being locked and rent being not received. At that time I had contacted him on his mobile phone. I cannot tell the date on which I contacted. The call was not connected. Police did not tell me to contact him again. The amount of deposit was with the owner of the flat. The amount of deposit was adjusted towards the arrears of rent and the expenses of vehicle. I cannot tell how much amount was adjusted on both counts. The expenses of vehicle were relating to our visits to the ATS office. Five-six persons used to go to the ATS office separately. Once we went together. I went many times, but I do not remember how many times. I was required to wait for the whole day at the time of the visits. My visits were during the period of two months. I do not remember the name of the officer whom I used to meet. My visits were to the Police Station Kanakiya, ATS

office, Andheri and ATS office, Kalachowki. After 10/10/06 I was called in the Girgaon Court on 17/11/06. After 10/10/06 I was not called in the ATS office. I was called during that period in connection with this case. I also visited Bhoiwada office of the ATS. They inquired with me in the office of the ATS only and did not take me outside at any time. It is not true that every time when they inquired with me, they took my statement. It is true that from time to time the ATS officers showed me persons and photographs and asked me whether I identify them. They did not take my statement or prepare panchnama on these occasions. It did not happen that sometimes they used to show the same person or the same photographs repeatedly. I cannot approximately state how many persons or photographs were shown to me. I do not know whether during this period of two months, police had kept me under their watch. It is true that my inquiry was pertaining to flat no. 101. It is not true that during the inquiry I was asked as to who resides in that flat, when he comes and goes. It is not true that during this period of two months, police took me to the house of Khurshidbegum or to the secretary or chairman. They did not take me to that flat.

17. Mohd. Irshad had brought his household articles. It is not true that I used to meet him every two or four days. His route for going to his

work was not from in front of my office. Khurshidbegum used to visit the flat in between. She told me in the office of the ATS that she had talked with Mohd. Irshad's wife. She had told me about this also when she used to come to collect the rent. She took away the articles of Mohd. Irshad. Police did not call me for identification parade.

18. I do not remember in which month I was called in the Police Station Kanakiya. Police of that police station had called me in connection with flat no. 101. It is not true that they inquired with me about persons visiting that flat. I was called after I had given the statement in the ATS office. I do not know whether copy of that statement was in the police station. It is true that the NOC Art-264 does not contain my handwriting. The original NOC is in the Police Station Kanakiya. I did not see the original in the ATS office.

19. I have heard the name Ahyauddin Rizauddin Shaikh. I do not know whether this name is of Khurshidbegum's husband. It is true that when I went with her to the flat, I did not see the inmates of the flat as I was standing outside. The inside of the flat was not visible from the place where I and Kasambhai were standing. It is true that in the ATS office, I was shown the photograph of accused no. 13 and was told that he used to stay in

that flat. It is not true that therefore I identified him in the court.

Cross-examination by Advs Vithlani h/f P. L. Shetty for A/3, 8, 9, 11,12
and Rasal for A/1 and 4 to 6

20. Declined.

No re-examination.

R.O.

Spl. Judge
Date:- 11/10/10

(Y.D. SHINDE)
SPECIAL JUDGE
UNDER MCOC ACT,99,
MUMBAI.