

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

**DATE: 14TH DECEMBER, 2010**

**Ex.No.715**

**DEPOSITION OF WITNESS NO.58 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Pritam Pradeep Mhatre

Age : 32 years

Occupation : Service

Res. Address : Room No. 6, Gr. Floor, Gogari Niwas Bldg., Dr. B. A.  
Road, Dadar, Mumbai -14.

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**EXAMINATION-IN-CHIEF BY SPP CHIMALKAR FOR THE STATE.**

1. On 29/09/06 ATS police constable Borkar called me at about 6.00 or 6.15 p.m. near Bhoiwada Police Station. He asked me whether I am ready to act as panch witness for the panchanama of the house search of an accused who is in their custody. I said yes. He asked me to sit in the police vehicle and we started from there. PC Borkar, other staff and the accused were in the vehicle. There were two vehicles. I sat in the vehicle in which officer Khanwilkar and the accused were sitting. We went to Govandi via Sion and Chembur. We got down at Shivaji Nagar. Officer Shengal told us that we are

to take the search of the house of the accused. He asked me whether I am ready to act as a panch witness. There was another boy like me who had come there in the other vehicle. Officer Shengal asked him also whether he is ready to act as a panch witness. We both consented.

2. After we walked for some distance, the accused pointed to a house and said that it is his house. The door was closed. The accused knocked on the door. A woman opened the door. The accused told us that she is his wife. Officer Shengal told her that they wanted to take the search of her house. He asked her whether she wanted to take the search of the police personnel or us panchas. She declined. Then we entered the house. There were two children inside the house. The accused said that they are his children. The house consisted of one room on the ground floor and one on the first floor. The room on the ground floor was 10' x 15'. There was a wooden bed and a glass showcase. There was a kitchen on the back side. We searched the room and the kitchen. There were medicine bottles in the showcase. Inside the bed there was a grey coloured briefcase. There were clothes in it. In the inside compartment on the floor of the bed, the officer saw white and black stains. The officer scraped the stains by two separate cotton swabs. He put the cotton swabs in separate plastic pouches. The cotton swabs were first wetted

and then the stains were scraped. There was a pressure cooker in the compartment of the bed. The officer took it in his custody. The plastic pouches were packed in khaki packets and sealed and our signatures were taken. The cooker was put in a plastic bag and wrapped with khaki paper and sealed and our signatures were taken.

3. Then we proceeded to the kitchen. There were utensils and food articles. There was a wash place(mori) in the kitchen. At the wash place there was a door for going out. It was opened and we went outside to the back. There was an iron ladder for going to the room on the first floor. The accused led us to that room. There was a man and a woman there. The accused said that the man is his brother and the woman is his brother's wife. That room was also of the same size of the room on the ground floor. There was a wooden bed, a window and a kitchen platform (ota). There were utensils. Nothing was found there. Police were writing a panchanama. They took the signatures of both of us panchas on the panchanama. The panchanama now shown to me is the same. It bears my signatures at sr. no.1, signatures of other panch at sr. no. 2 and signatures of the police officer by the side at three places. It also contains the signature of the accused at the end for having received copy of the panchanama. The panchanama was read

over to the accused. Its contents now read by me are correct. (It is marked as **Ext.716**).

4. I can identify the accused who was with us and whose house was searched. (Witness looks around the court room and points to the accused no.6, who is made to stand up and tell his name, which he states as Shaikh Mohd Ali Alam Shaikh). He was the same accused.
5. I will be able to identify the packets and the cooker. ( Ld SPP requests for opening two packets received from the FSL. The two packets are at sr. no. 3 of list Ext.16F. They are envelopes of the FSL, State of Maharashtra, Mumbai containing the description-Name of the Division-GA & I -Division, Case No.- M-463/06, Exhibit No.- 1 & 2, Police Station-Borivali Railway Police Station, CR. No.- 156/06, date below the signature is 08/11/06. They are given to the learned advocates for the accused for inspection. On opening both a plastic pouch and a label dated 29/09/06 with seal and the description of the crime number, name of the accused, etc.. are found in each envelope. The plastic pouches contain cotton swab. Witness is shown the labels and the pouches). The labels bear my signatures at sr. no.1, signatures of the other panch at sr. no. 2 and signatures of the police officer by the side. The plastic pouches and the cotton swabs are the same. (The cotton swab in

the envelope Exhibit No 1 is marked as **Art-301**, the plastic pouch is marked as **Art-301A**, the label is marked as **Art-301B** and the envelope of FSL is marked as **Art-301C**. The cotton swab in the envelope Exhibit No 2 is marked as **Art-302**, the plastic pouch is marked as **Art-302A**, the label is marked as **Art-302B** and the envelope of FSL is marked as **Art-302C**).

6. (The pressure cooker at sr. no.2 of list Ext.16F is wrapped with khaki paper which is stuck by brown tape, tied by white thread having lac seal at the bottom and on the top above a white label containing the description of the crime no., etc. It is given to the learned advocates of the accused for inspection. Witness is shown the cooker). The label bears my signature at sr. no.1, signature of the other panch at sr. no. 2 and signature of the police officer by the side. (The wrapping is opened by cutting the white thread. It contains a new pressure cooker of Kanchan company of five liters with a rubber ring attached to the lid, a steam plate and whistle inside). The pressure cooker is the same. (The pressure cooker with the lid, whistle and steam plate is collectively marked as **Art-303**, the khaki wrapper with label, two seals and white thread is marked as **Art-303A**).

**Cross-examination by Adv Rasal for A/1 and 4 to 6**

7. I stay at the given address since my birth. I stay by the side of

Hindmata theater. Bhoiwada Police Station is 5-10 minutes from Hindmata theater. Both these areas are densely populated. It is true that when PC Borkar approached me, there was a traffic of people on that road. I did not know him before that day. I was serving in Swami Samarth Enterprises of one Gurav at Dadar. My work was to keep a watch on the construction sites of my employer. The sites were open and it was my duty to sit there. There were three-four persons at the site. I used to get Rs. 3,500/- salary. I was newly appointed. The site was in Dastoor Wadi by the side of Kamble brothers. I do not know whether there were many efforts to take possession of the site property. I do not know whether Arun Gawali, Sunil Ghate and others used to come to that site. The site was behind the property of Kamble brothers. At that time that property was not developed. My duty hours were from 10.00 a.m. to 5.00 p.m.

8. I knew officer Khanwilkar. He was PI of Bhoiwada Police Station earlier and then he went to ATS. PI Khanwilkar was nearby in his vehicle when PC Borkar met me. Both vehicles were there ready to go. I knew Khanwilkar since he was at Bhoiwada Police Station. I cannot say since when he was there. I used to visit him. On that day I was with the police for two hours and thirty minutes or forty-five minutes. Police started writing the

panchanama when we reached at Govandi. I cannot tell the name of the officer who wrote the panchanama. He started writing since the time we got down from the vehicles at Govandi. He was writing as the events were happening. When the writing on the panchanama started, I was knowing that I was called from Bhoiwada. It did not happen that I was called at Shivaji Nagar, Govandi. If it so written in the panchanama then it is wrong. I did not pay attention whether this thing was written when the panchanama was read over.

9. I did not search the police or their vehicles before proceeding for the house search. I did not see whether the other panch was sitting in the other vehicle. I did not know where he resides and from where he was brought. It is true that during the entire period I did not have any talk with him. I saw the accused when I sat in the vehicle. I did not have any talk with the accused. I did not inquire with the police as to when and from where the accused was arrested. We got down at Shivaji Nagar at some distance from the house of the accused. I cannot tell the number of traffic signals from Bhoiwada to the house of the accused. We may have crossed 3-4 lanes after the main road for going to Shivaji Nagar. I cannot tell the number of shops that we passed from the spot where we got down from the vehicle upto the

house of the accused. We went on foot to the house of the accused. The house of the accused is in the slum area. There are many houses around it. There are no houses exactly opposite the house of the accused. There is open space in front of the house of the accused and thereafter there are houses. House of the accused was the first house in that area. It is adjoining the road. There is one door on the front side. I do not know whether there is window. The open space after opening the front door inside the room is sufficient to accommodate 5-6 standing persons. The wooden bed was immediately on the left side after entering the front door and thereafter was the showcase. There were two compartments having two doors opening outside sideways on the front side of the bed. I cannot tell the measurement of the doors. It is not true that the door by the side of the showcase was not in a position to be opened as the showcase was touching it. There was a suitcase, clothes and cooker in the compartment in the bed. There were shirts and pants but I cannot tell their number. Police did not count the clothes. The above articles were in the one compartment that was in the bed. There was no other showcase on the wall. It will be incorrect to say that there was another showcase fixed to the wall above the bed. I cannot tell what flooring the house had. The entrance to the kitchen was on the right side by the side of



the showcase. The open space inside the room is in front of the door. The articles in the kitchen were not counted and measured. There was no cooker in the kitchen. Police did not ask for the ration card to find out the number of persons residing there.

(Adjourned for recess).

**Date : 14/12/10**

**SPECIAL JUDGE**

**Resumed on SA after recess**

10. I had not taken the seal in my hands. I cannot say whether it was the seal of the Police Station Bhoiwada, ATS or anybody else. I did not feel it necessary to verify. The seal was put on the packets and then I signed. I signed at approximately five-six places. I signed at the places shown by the police officers. I signed on the panchanama after it was read over to me. After I signed, the panchanama was read over to the accused. I do not remember whether it is written in the panchanama that it was read over to the accused and his signature was obtain therefor.
11. I had gone with the accused, the other panch and officer Tajane on the first floor. There were two people there at that time. The police officer did not inquire as to how many persons live in that room. No cooker was found in that room. We were there for about 10-15 minutes.

12. There was one white stain and one black stain on the floor of the bed. They were inside near the doors of the bed. Police did not measure the size of the stains and did not write the measurement in the panchanama. The stains did not go away after the swabs were taken. I cannot tell the name of the officer who took the swabs. It is not true that the cotton swabs were entirely wetted. Only once the stains were wiped by the swabs. The swabs were kept in the plastic pouch in the same wet condition. I signed after the seal was put on the packet. Thereafter, I did not have occasion to see the cotton swabs again.

13. The cooker was not in its box but it was just there with the lid fixed on it. Such types of cookers are easily available in the market.

14. It is not true that I was not present on 29/09/06, that the panchanama was not prepared in my presence, that wife of the accused and one son were not present in the house at that time as they had gone to Nagpada to meet the accused, that the brother and his wife were not present in the house at that time, that the panchanama was not prepared at the spot and my signatures were taken in the police station, that the cotton swabs and cooker were not taken in my presence and that I deposed falsely on the say of police.

**Cross-examination by Adv P. L. Shetty for A/3, 8, 9, 11 and 12**

15. I was called when I was in Bhoiwada. My house is on the main road, 5 to 10 minutes from Bhoiwada Police Station. The other panch was not with the police when I started from in front of Bhoiwada Police Station. I cannot tell the size of the hall. The entire house was of 10' x 15'. It is true that the hall portion was slightly larger than the kitchen portion. I cannot say whether it was fifteen feet from the door to the kitchen. It is not true that I am saying that the house was 10' x 15' only because the police told me so. I saw it therefore I am saying so. I saw the hall as well as the kitchen portion. I cannot tell the approximate measurements of the kitchen as well as the hall. I cannot say whether the kitchen portion was 7' x 10' and the hall portion was of 8' x 10'. There was a wall separating the kitchen and the hall and entrance to the kitchen. For going to the first floor one has to go from the door at the backside of the kitchen. I cannot say whether the kitchen wall was of 6" width and I cannot tell its height. I cannot say whether it was upto the ceiling or upto the loft. The bed was from the wall of the front door upto the opposite wall. The bed was adjacent to the wall. The bed may be 6' x 3'. The showcase was adjacent to the partition wall nearly upto the entrance of the kitchen. The showcase may be 3' long and 2 ½' in

height. I cannot tell its width. I cannot tell the measurement of the empty space in that room and whether it was 4' x 5'. If 4-5 persons sit cross-legged on the floor, it would have occupied the open space leaving no space for any person to go to the kitchen. I cannot tell the number of the other rooms by the sides of that room but there were other rooms. Some of them had rooms on the first floor. We entered the room after walking 4-5 steps from the open space in front of the room where the vehicle was halted. I cannot tell the measurement of the open space. Children were not playing there. Only our two vehicles were parked. Opposite the house there was entire open space. The vehicle was not visible from the inside of the room. There was no space for parking the vehicle in front of that room because there was crowd of persons. I cannot tell the number of persons in that crowd. Gents, ladies and children had gathered there to see what was going on. The work inside the room was done by closing the door. I cannot tell how many officers and how many constables were there, but there were two police officers whom I knew. One was officer Shengal and one was Khanwilkar. I knew officer Khanwilkar since before and I came to know about officer Shengal at that time. I came to know the name of the officer Tajane. Constable Borkar was there. I knew only these four names. I had gone in the Bolero jeep. The

other vehicle was Qualis. There were 5-6 persons in the Bolero. I did not see how many persons were in the Qualis. The Qualis was police vehicle. Persons from the other vehicle did not enter the room. Till the panchanama was completed and we came out of the room, only the persons in our Bolero vehicle had gone in that room. It is not true that the persons in the Qualis vehicle did not get down when we came out. I cannot tell who were the persons in the Qualis vehicle and how many they were. Behind the rooms there was a nala. Thereafter there were rooms. They may be at the distance of 5'-6' from the room. They were similar type of rooms.

16. There was no lady constable or police officer in the total team. The children were around 5-6 years of age. Officer Shengal asked the woman to take their and our searches. I did not tell him that she is a woman and how she can take our searches. Other than the woman, the accused was asked there whether he wanted to take the searches of the police and our searches. I do not know whether this is written in the panchanama. I cannot assign any reason why it is not written in the panchanama. There were no utensils in the bed. The officer took out the articles from the bed. I cannot tell his name. Except him no one searched the bed. The cooker was opened but no objectionable article was found therein. I did not ask the officer why

he seized the cooker. They said that it was seized for the purpose of the investigation. It was a new cooker and unused.

17. We required 45 minutes from Bhoiwada to Govandi. We were at the spot for about 1½ hours. I did not talk with the accused during this period and he did not tell anything to me. I did not ask the police for how long the accused was in their custody.

18. It is not true that I had not gone to the spot on that day and nothing happened in my presence and that I am deposing falsely to help the police.

**Cross-examination by adv. Wahab Khan for A/2, 7, 10 & 13**

19. It is not true that I deposed as tutored by the police. This is my second occasion to give evidence in the court. The first occasion was in a police case of Bhoiwada Police Station in the Bhoiwada court as a panch witness. That case is of one year before. I cannot tell the date of that panchanama. The panchanama was going on from 11.00 am to 5.00 am. concerning a double murder case. This was my first occasion to act as a panch witness in this case. I have acted as panch witness for the ATS in a fake currency case. I cannot tell the name of the officer. I cannot tell the date and time of the panchanama. It was of seizure of fake currency. I cannot tell

the name of the accused. It is after the present case, two years before today. I cannot assign any reason why I do not remember the date and time of that panchanama. Other than this case and the fake currency case, I have not acted as a panch witness in any other case by the ATS. I have not signed on any other panchanama than these two cases. The ATS officers have never called me for any third case to act as a panch witness. I have not heard of Aurangabad Arms Haul case investigated by ATS. I have not acted as a panch witness on the point of panchanama of transcript of phone tapping. I have not acted as a panch witness in January, 2006 in the case of arrest of arrest of Kashmiri residents. Officer Tajane had not recorded my statement on 12/06/06 or 17/06/06 in other case.

20. PI Tajane was standing in the room. PI Tajane was dictating the contents of the panchanama and the other officer was writing it. I do not know whether any senior police inspector was with us. I do not know which police officer signed on the panchanama. No inquiry was made with the members of the house about the pressure cooker. Their or their neighbour's signatures were not taken on the panchanama. Copy of panchanama was not given to the members of that house or to any neighbour. No other expert was called when we were there. No video shooting was done and no photographs

were taken in my presence at the spot. I had signed on labels and not on the khaki packets. It was written in the panchanama that the plastic pouches were packed in khaki packets and sealed. I cannot assign any reason why this is not written in the panchanama. It is true that the khaki packets are not before the court. I cannot assign any reason for this. The plastic bag used for packing the cooker was with the police. It was transparent. It is true that the plastic bag is not there after the wrapper was opened in the court. I cannot assign any reason for this.

21. There is no criminal case against me and I was never arrested. I do not have any service proof. I do not know whether officer Khanwilkar is under suspension now. There is a mention of whistle and steel plate of the cooker in the panchanama. On going through the panchanama I say that it is not mentioned. I cannot assign any reason for this.

(Adjourned at the request of ld adv at 4.30 p.m.)

**Date : 14/12/10**

**SPECIAL JUDGE**

**Date : 07/01/11**

**Resumed on SA**



22. I may have acted as panch witness in CR No. 212/09 of Police Station Bhoiwada on 28 and 29/07/09. I had given evidence in a court in these premises in 2010, which was a double murder case. I do not remember whether it was court room no.24. On 12/06/06 I had acted as a panch witness at Kalachowki Police Station. I do not know whether it was crime No. LAC-03/06 of ATS. (Witness is shown certified copy zerox copy of a panchanama dated 12/06/06, which is with the learned advocate and which he states that he would produce). It is true that the panchanama contains the facsimile of my signature. I do not know whether I signed it in the ATS office but I signed in the Kalachowki Police Station compound.

Q. Did it happen that you were called in the ATS office for the panchanama?

A. I was called in the Kalachowki Police Station.

I cannot say whether the mention in the panchanama that I was called in the ATS office is wrong.

Q. For what purpose you were called there?

A. I was called for panchanama of phone recording.

The panchanama continued for two days. I had my meals there. I do not remember how many signatures I did, but they were many. It is not true that in between the last date of my evidence in this court and today, I am tutored

to say about signing the panchanama and being there for two days.

23. (Witness is shown certified zerox copy of panchanama dated 17/06/06 in MCOC 16/06, which is with the learned advocate and which he states that he would produce). The panchanama now shown to me bears the facsimile of my signature. It is not true that I had falsely stated on the last date that I had not acted as a panch witness for the ATS before this case. It is not true that I am a regular panch of the ATS, that I am deposing as I am tutored.

No re-examination.

**R.O.**

**Special Judge**

**Date:- 07/01/11**

**(Y.D. SHINDE)**

**SPECIAL JUDGE**

**UNDER MCOC ACT,99,**

**MUMBAI.**