

**M.C.O.C. SPECIAL CASE NO. OF 21/06****DATE:3RD FEBRUARY, 2011****Ext.No.776****DEPOSITION OF WITNESS NO.68 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Nitishkumar Kalishchanddra Mishra

Age : 35 years

Occupation : Business (Internet Cafe)

Res. Address : Vinodanand Zha colony, Dist. Madhubani,Bihar.

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

1. I started my internet cafe by name Shanti Communications in July 2001. It is on the ground floor of Shivshakti Complex, Bata Chowk, Madhubani. When I started it I had two computers and at that time I had no assistant. After my father died and the business progressed slowly, I kept one staff member. If there was some hardware problem I used to get it repaired from a person by name Amlesh Gupta who had a shop by name Technoland, which was nearby. I also used to make purchases from him. At that time I had landline telephone number 06276-225301 for the purpose of internet. At that time I used to do typing job work and sell ITC cards with the permission of BSNL. When I received the internet connection in

November 2002 my user name was 'nkmdhaba5' and my password was 'abcd1234...'. After some time, in 2003 I applied for phone and PCO booth along with internet connection. I got number 225933 and the user name was 'nkm...' something and the password was 'nkm123'. I used the above two landline numbers for the purpose of internet upto February 2006 till I got the broadband connection. The IP address was 59... something.

2. My working hours were from 10.30 a.m to 8.30 p.m. I used to charge Rs. 30/- for an hour and Rs.15/- for half an hour. Customers visiting my cafe used to check e-mails, send e-mails, surf on the internet, chat, etc. I used to note the timings of the customers starting the internet and closing it and the charges. Our district is a small district and I was the first person to introduce the concept of internet cafe there. Mostly local people used to come to my cafe and I got to know some of them as they used to come repeatedly.
3. I watch TV. I had come to know about the railway bomb blasts in Mumbai in 2006 from the TV and as many of our relatives are in Mumbai, I had contacted them to inquire about their well being. It was a shocking news to hear about the serial blasts. I used to read the

Hindustan and Dainik Jagaran newspapers in Hindi, which we used to take at our house. On 21/07/06 it was in the newspapers and in the television news that two persons from Madhubani were caught in connection with the blasts. On the next day the names of the persons, their photographs and that one of them was from Basupatti and one was from Malmal was also in the newspapers. I was shocked on seeing the photographs because one of them used to visit my internet cafe. His name in the newspapers was Kamal. He was my customer. One Amarnath Kurbe was my staff. He also identified that person. That person Kamal used to come to my internet cafe since the end of 2002. He used to come once or twice in a week or ten days, then there used to be a break of three-four months and sometimes more than a year. He used to be at the cafe for half an hour to one hour and work on any computer that was vacant. Initially when he used to visit my cafe his clothes were dirty, unclean and bad smelling. When he returned after a gap of about one or one and a half years, he was changed. He was wearing good clothes and appeared to be a gentleman and used to come on a white coloured bike. Initially when he used to come wearing dirty, etc.,

clothes, I had asked him from where he was and he had told me that he is from Jainagar and does leather business. From the newspapers I came to know that he is a resident of Basupatti and has his house there. I will be able to identify him if I see him today. (Id SPP asks the witness to look around the court room and to see if he is present in the court hall. Witness looks around the court room and points to the accused no.1, who is made to stand up and tell his name, which he states as Kamal Ahmed Mohd. Vakil Ansari). He is the same person. The ATS police recorded my statement.

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

4. The ATS police recorded my statement on 26/07/06. They had inquired with me at my place. One town thana inspector probably by name Mundrika Singh along with some police officer Choudhary from Patna had accompanied officer Tajane of ATS, Mumbai. Madhubani is 180 kms from Patna and one required about six-seven hours by road. The police had come at about 1.30 to 2.00 p.m and were with me for about two hours. Officer Tajane typed my statement on a computer in my cafe. A printout of the statement was obtained from the printer that was in my cafe. They did not use any other thing than

the computer and the printer. However he checked the IP address before he recorded my statement. Thereafter, the ATS did not call me again. The accused no.1 was not shown to me till today.

5. As my cafe was the first, many people used to visit it for their work. It is true that people from all walks of life, mostly educated and computer literate, used to come. The ITC card is used for making STD and ISD calls from local phones that do not have the facility. I had a PCO booth, but it did not have the ISD calling facility. It had local and STD facility. I had applied to the Commercial Department of the BSNL at Darbanga for the PCO. Permission of the local authority like police or municipality was not necessary. Except the timings of the customers using the internet, I did not maintain any other record of the customers.

6. I always read the newspapers, therefore, after the news of the blasts I was continuously reading them. I remember only that photographs of these two persons were in the newspapers. I do not remember the remaining as four-five years have passed. Police came to me three-four days after I saw the newspapers. After seeing the photographs, I did not tell about this to any other person except to my

family members,. I have no idea whether the computer from which an e-mail is sent can be located.

(Adjourned for recess).

**Date : 03/02/2011**

**SPECIAL JUDGE**

**Resumed on SA after recess**

7. I had stated to the police that I had come to know about the railway bomb blasts in Mumbai in 2006 from the TV and as many of our relatives are in Mumbai, I had contacted them to inquire about their well being. I cannot assign any reason why this is not written in my statement. There were no games on my computers, but people used to do typing work. Jainagar and Basupatti are two different places.

8. It is not true that accused no.1 never came to my internet cafe, that he never disclosed to me that he is from Jainagar, that I was brought to the ATS office at Kalachowki, Mumbai and inquired with and that I deposed falsely because of the pressure of the ATS.

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

9. Nepal border is approximately 40 kms from Madhubani. From Basupatti it might be 10-15 kms. I had gone once to Nepal. Police of

both countries are posted on either side of border. It is a general rule that people have to make entry in a register maintained by the Nepal authorities before entering that country. Indian people even take their motor cycles to Nepal.

10. Officer Tajane had not come with summons, but had come with the address of my shop. I do not remember whether they had my name with them. There were three-four customers in the cafe at that time, but no staff member was present. There were total four policemen. There were two of Bihar and two of Mumbai. Officer Tajane typed my statement. It did not happen that some other person typed it. He did not tell me that he knows typing. He asked me to tell the customers to go out. He had checked my registers concerning my business. I used to make entries daily in the register. He did not check any entry of any particular date. Almost all the registers that I maintained since I opened the cafe were there. I had maintained them regularly. They were maintained computerwise. It did not happen that I did not make any entry about a particular computer. Officer Tajane did not seize the registers and did not ask for zerox copies. He had checked all the computers to see whether the internet

facility was working. I have heard that any work done on the computer is stored in the hard disk. As per my knowledge all the data of e-mails, etc., are not stored on the computers of the service providers. I cannot say whether any e-mail address concerning this case was prepared from my internet cafe. Officer Tajane did not tell me that such an e-mail address was prepared from my internet cafe. No computer or internet expert was called there. He did not seize any hard disk. He did not copy any hard disk. I did not used to see the identity proof of customers during that time. On an average about 50 customers used to come daily. My cafe used to be closed on Sundays. When he came to my cafe, officer Tajane had told me that some e-mail concerning this case was made from the computer in my cafe and some e-mail was received. He did not show me the printout, the date, time and contents of any e-mail. He did not show me any woman and had not asked me about any woman. I was using Airtel mobile number 9934074594 in 2006. At present I am using mobile number 7631298970. I had talked with officer Tajane from my mobile in 2006. I had called him once after his visit to my cafe after about one week. As he had sealed my internet cafe, I had called him to ask



him when he would open the seal of my cafe, the key of which was with town thana. My cafe was sealed for about a week. For that period I could not enter the cafe. I did not complain about the sealing. He did not give me any panchanama or notice in writing about the sealing. He had sealed it and had given me oral instructions that a team will come for the purpose of investigating the hard disk. I knew that the keys were with the town thana. I did not make any efforts to go there to obtain the keys. Except that one call I did not have any other talk from my mobile with officer Tajane. As far as my knowledge is concerned, no team visited the cafe for investigating the hard disk. When I called him PI Tjane told me to go to the town thana and take the keys. When I went to the town thana, they gave me the keys. I do not remember whether any record was made at the town thana about sealing my cafe, keeping the keys there and then giving the keys to me. I do not remember whether I signed when I took the keys. The lock was not sealed with lac seal. I did not make any application for obtaining possession.

11. I had stated to the police that the accused no.1 used to come once or twice in a week or ten days, then there used to be a

break of three-four months and sometimes more than a year, that when he returned after a gap of about one or one and a half years, he was changed and he came on a white coloured bike. I cannot assign any reason why it is not written in my statement.

12. The news about accused no. 1's arrest had come in the local newspaper. It is not within my knowledge that some construction work was going on at his house and police had taken away half or one kilograms cement. The photograph of the accused no. 1 had come in the newspaper which is circulated in the entire state of Bihar. I did not see that news on the TV. As far as I remember, it was a half photograph. His name, the case details and the address of his village were also given. The police officer's statement about the reason of his arrest was also given. I did not show any such newspaper to the police, because I did not find it though I searched. I cannot produce it before the court. I do not know whether police had published the photographs. Police did not show me any motor bike. It is not true that I was the first person to start the business of selling ITC card.

13. Officer Tajane had asked me to produce the documents of obtaining internet connection, telephone bills and I had

shown those documents. They did not seize the documents under a panchanama, but they took them away. Till now I have not seen them again and they are not shown to me in the court. It is not true that I deposed falsely that the accused no. 1 told me that he stays at Jainagar and does leather business. My cousin brother Alok stays in Navi Mumbai and works in Tata Motors Finance. I talk with him on phone sometimes. He is here since last two years. My sister and brother-in-law used to reside in Navy Nagar before 2006. My brother-in-law is in the Indian Navy. It is not true that in order to pressurize me officer Tajane had sealed my shop, that he had not taken my statement and had not checked my computers. It is not true that I deposed falsely that I remembered the accused on seeing his photograph in the newspaper. (Id adv asks the accused no.1 to stand up and asks the witness about his height). The accused no.1 may be 5'10" or 5'11". He may be about 35 years of age now. He is blackish and medium to strong built. It is not true that I deposed falsely because of the pressure of officer Tajane, that I was shown the photograph of the accused no.1 before I came to court today, therefore, I identified him.

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

14. Declined.

No re-examination.

**R.O.**

**Special Judge**

**Date:-03/02/2011**

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