

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Misc. Application No.328 of 2023

Date

Order with signature of Judge

For hearing of main case

20.11.2023

Ms. Rubina Qadir, DPG along with ASI Zubair Khan Afridi, P.S Boat Basin.

Mr. Gulfaraz Khattak, Assistant Attorney General.

**_*_*_*_

By this order, I would like to dispose of the captioned Criminal Miscellaneous Application filed by the Prosecutor General Sindh seeking direction to the respondent Bank to provide certain details, about cheque No. 15101721, dated: 27.09.2022, amounting to Rs. 5000000/= of Silk Bank Limited, Clifton Branch, Karachi, which was not encashed, as offense/crime requires further investigation.

2. It is inter-alia contended by the learned Assistant Prosecutor General that the Investigating Officer of FIR No. 95/2022 registered for the offense under section 489-F PPC, of P.S Boat Basin, Karachi (South), requires the detail of the bank account operating in Silk Bank Limited, Clifton Branch for cheque No. 15101721 dated: 27.09.2022 amounting to Rs. 500,00,00/-, as the matter/ crime requires further investigation and reaching on the truth of the case and submission of such report before the competent Court of law. She further submitted that the Investigation Officer approached the respondent bank to provide details of the above-mentioned cheque and account number as maintained with their respective bank but the Investigation Officer was denied and was asked to file a proper application and seek permission from this Court under section 94 Cr.P.C. She next argued that without the cooperation of the respondent/concerned Bank Manager, further investigation cannot be completed. Per learned APG Section 94(1) (b) Cr. P.C. authorizes the investigation officer to seek permission in this regard so that the investigation may be completed.

3. The case in hand is that FIR No. 95/2022 was lodged by the complainant under section 489-F PPC, of P.S Boat Basin, Karachi (South), with the narration that he was doing business with one Khusro Mirza since 03/04 years, who sold him a Toyota vehicle and he was required to pay him Rs.1,015,000/- (Rupees One Crore and Fifteen Thousand only)

however, he issued a cheque bearing number 15107721 of Silk Bank Limited, Clifton, Karachi branch for Rs.500,00,00/-, which was presented in his bank account maintained with Bank Al Habib, Clifton but same could not be encashed, and the investigating officer required such details of accounts of the accused from concerned bank to take the case into its logical end under the law.

4. The bank officer appeared and submitted that the bank was ready and willing to provide the requisite information to the investigating officer.

5. I have considered the arguments advanced by the learned APG and carefully perused the material available on record relevant provision of law.

6. In the instant case, the question involved is whether the Investigating Officer can ask the accused to produce his Bank Statement and /or concerned Bank under the provision of section 94 of Cr. P.C., which is not covered under Section 265-C even when the trial has not yet begun and cognizance is yet to be taken based on the aforesaid FIR. Before embarking upon the discussion on the question, it would be appropriate to reproduce the relevant provisions of Section 94(1) Cr. P.C, which read as follows:

“94. summons to produce document or other thing: (1) whenever any court, or, any officer incharge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of, any investigation, inquiry, trial or other proceeding under this code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons or order:

provided that no such officer shall issue any such order requiring the production of any document or other thing which is in the custody of a bank or banker as defined in the Banker's Books Evidence Act, 1891 (xvii of 1891), and relates, or might disclose any information which relates to the bank account of any person except--

(a) for the purpose of investigating an offense under sections 403, 406, 408, and 409 and sections 421 to 424 (both inclusive) and sections 465 to 477-a (both inclusive) of the Pakistan Penal Code, with prior permission in writing of a sessions judge; and

(b) in other cases, with the prior permission in writing of the high court.

(2) any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) nothing in this section shall be deemed to affect the Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram, or other document or any parcel or thing in the custody of the postal or telegraph authorities”

7. The Supreme Court in the case of *The State Vs. Usman* has held that there is no limitation as to the stage of the inquiry or trial when a court can, in the exercise of its power under this Section, make an order for the production of any document. The only condition for the exercise of the power under Section 94 is that the production of the document must be necessary or desirable for the inquiry or trial before the court. The word 'whenever' in Section 94 indicates that a court can exercise the power of requiring the production of any document under this Section at any stage of the inquiry or trial. Further, Section 94 does not restrict as to whose point of view, whether of the prosecution or the accused, the required document may be necessary or desirable for the inquiry or trial. A Court being a neutral arbiter does not act for either the prosecution or the accused but for the dispensation of justice. For the dispensation of justice, the court is to ascertain the truth in respect of the matter under inquiry or trial before it. The production of a document that would facilitate the court in this regard is to be considered necessary or desirable for the inquiry or trial. It is immaterial whether the production of such a document would support the prosecution case or the defense of the accused. Therefore, any party may at any stage of the inquiry or trial apply to the court, under Section 94, for the production of a document and is entitled to its production if it satisfies the court that the production of that document is necessary or desirable for such inquiry/ Investigation or trial

8. In view of the above legal and factual position, I am of the view that the learned trial Court has the power and authority to consider the application if moved by the Investigating Officer under Section 94 Cr. P.C., to meet the ends of justice, as respondent Bank cannot be compelled to produce any document or thing, without permission of the Court since the applicant's anxiety is to see the documents i.e. signatory of cheque, and reasons of the dishonoring of the cheque as well name of the Account Holder. Prima facie the Investigating Officer can request the concerned Bank for a smooth Investigation that cannot be hampered. The Bank officials shall cooperate with the Investigating Officer if he has a genuine request and permissible within the parameters of law.

9. Resultantly, the instant criminal Miscellaneous Application is disposed of in the above terms.

J U D G E