Order sheet

IN THE HIGH COURT OF SINDH, KARACHI.

Criminal Revision Application No.209 of 2025

(Sumair Mumtaz ***vs***. The State & others)

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Abdur Rahman

Date of hearing
& order **04.08.2026**

Mr. Raj Ali Wahid Kunwar, advocate for applicant
Mr. Irshad Ali, Assistant Attorney General

O R D E R

MUHAMMAD IQBAL KALHORO J: Applicant, Sumair Mumtaz standing a trial in the Special Court (Offences in Banks) Sindh at Karachi, has filed this criminal revision application challenging an order passed by the Special Court on his application u/s 94 r/w section 241-A Cr. PC, and Article 85 of the Qanun-e-Shahdat, seeking production of certain documents listed therein for the purpose of preparing his defence in the upcoming trial.

2. The impugned order is two-liner illustrating that those documents be given to accused as and when available. This construction does not necessarily imply that prayer of the applicant seeking production of the documents has been declined. But, learned counsel in reply to a query during the arguments, has revealed that when he after the order tried to draw indulgence of the Court for implementation of the order, he was reminded that as and when those documents were exhibited in the evidence by the prosecution, the same would be delivered to him. According to him, it was in fact such a reply that prompted him to file this criminal revision application against the impugned order because if these documents are delivered to him after evidence, it would defeat purpose of preparing defence in advance.

3. We have heard learned counsel for the applicant at some length. He has relied upon the case laws mentioned in the footnote[1] to support his contention that applicant has a right to have these documents before commencement of the trial to prepare his defence.

4. Learned Assistant Attorney General does not seem to oppose the application in hand but has insisted that the documents admissible in

[1] 1999 PCRLJ 496, 1997 MLD 2869, 2009 YLR 1007, 2007 PCRLJ 233, 2024 MLD 1942, 2021 PCRLJ 145, 2020 PCRLJ 683, 2016 YLR 683, 2016 YLR 62, 2018 P Cr. LJ Note 34, 2023 SCMR 1676 and 2022 PCRLJ 59.

evidence have already been handed over to the applicant in terms of section 241-A/265-C Cr.PC whichever the case may be.

5. We have considered such submissions and gone through the material available on record including the case laws cited at bar. Section 241-A and section 265-C Cr.PC are *pari materia* and provide for supply of statements and documents to the accused before framing of the charge. These documents include first information report, the police report, the statements of all witnesses recorded u/s 161 and 164 Cr.PC, and the inspection notes recorded by Investigating Officer (**IO**) on his first visit to the place of incident and the notes/memos recorded by him of any recovery made during investigation. However, a part of the statement u/s 161 Cr.PC disclosing something inexpedient in the public interest is excluded from the scheme of the said provisions. Section 241-A Cr.PC is usually understood to be applicable in the trials held by the Magistrates, whereas, section 265-C Cr.PC is invoked in the sessions trials.

6. A perusal of both the provisions would indicate that except certain category of documents detailed specifically therein, the prosecution is not bound or under any obligation to provide any another document to the accused to make him aware of the charge brought in the Court against him. Since over the time the scope and nature of criminal trial has expanded manifold and more than often criminal case is based on a number of documents, other than the ones mentioned in the said provisions, conveying the existence of incriminatory material against the accused, even the strict compliance of *ibid* provisions does not tend to fulfill the purpose set out in them, i.e. to afford a fair chance to the accused to stand trial and to be fully aware of the charge against him so as to prepare his defence.

7. For instance, in the cases of fraud, especially the ones related to offences in Banks, a number of documents are involved and from an integral part and source of the allegations brought out against the accused. Since there is no mention of these documents u/s 241-A or 265-C Cr.PC, the prosecution does not make an endeavour to file these documents along with final report u/s 173 Cr.PC and the Courts too in absence of any specific provision binding them to do so, do not usually call upon the prosecutors to submit all such documents at the time of filing of the challan with a view to provide the same to the accused in compliance of above provisions. Result of such overlook always translates into prejudicing the accused in preparing his defence and putting it up, in due course, in the trial for a consideration.

8. This situation, even if summerly examined, would appear to be a blatant violation of Article 10-A of the Constitution, which guarantees fair trial to an accused. It is not necessary, nor is it required here to define expression of fair trial as this has already been done by the superior courts in a numbers cases[2]. Suffice it to say that any expression of fair trial would be incomplete, or lacking in its basic essence, if it excludes provision to the accused of all the relevant documents collected during the investigation for establishing incrimination against him. Indeed, the non-supply of such documents, before framing of the charge, in terms of section 241-A/265-C Cr.PC, would render the accused crippled from understanding wholly the charge against him and the incriminating material collected to prove the same in the Court. This approach tends to be discriminatory and the accused for the most part, remains oblivious of the fundamentals underlying documents that are set to be brought and used against him in the trial. No one would dispute that presence of such position has all the trappings of undermining the very concept of a fair trial in that the accused is tried without being afforded a reasonable opportunity to comprehend the charge against him in order to defend himself.

9. The Superior Courts have time and again in various decisions taken note of such problems, and have firmly laid down that in such case the Court should direct the prosecution or the complainant to produce a document in its or his possession or power, which is not covered u/s 241-A/265-C CrPC, or section 265-C CrPC, if the production of the such documents is necessary or desirable for the purpose of a fair trial or inquiry. We are guided particularly in this respect by the cited judgment of the Supreme Court in the case of *The State vs. Ch. Ghulam Muhammad Usman*[3]. In this case, the Supreme Court has deliberated upon in detail the scope of section 94 CrPC. This provision regulates Court's power to issue summons for the production of documents or other things in Court, which are necessary for the purpose of any investigation, inquiry, or trial.

10. The view of the Supreme Court in this respect is that the scope of section 94 CrPC is not restricted to being invoked either in favour of the prosecution or the accused. The Court is a natural arbitrator, and it does not act for either the prosecution or the accused. The duty of the Court is to

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[2] New Jubilee Insurance Company ltd, Karachi vs. National Bank of Pakistan, Karachi (PLD 1999 Supreme Court 1126) & Aftab Shahban Mirani vs. President of Pakistan & others (1998 SCMR 1863)
[3] 2023 SCMR 1676

dispense the justice, and in doing so, the Court is required to ascertain the truth in respect of the matter under inquiry or trial before it. The production of a document that facilitates the Court in this regard has to be considered necessary or desirable. It is immaterial whether production of such documents would support the prosecution's case or the defence of the accused. In the opinion of Supreme Court, any party, at any stage, can move the relevant Court u/s 94 CrPC for the production of a document, and satisfy the Court that its production is necessary or desirable for purpose of inquiry or trial.

11. The Supreme Court in the same case has also taken note of the situation where, due to dishonesty, negligence, or any other reason, the prosecution does not produce certain documents along with the police report, and since those documents are not filed, the same are not supplied to the accused u/s 241-A/265-C CrPC. In such a situation, it is held that it would not be just and fair to the accused to reject his application for the production of such documents and to let him undergo the ordeal of protracted trial, and make him wait for the stage of defence evidence to produce the same in terms of section 265-F(7) CrPC. It is further noted that where documents, which are not produced by the prosecution along with the police report but are relevant to the matter under the inquiry or trial, and to use them for his defence, the accused is legally required to confront the prosecution witnesses with those documents in cross examination. Then, it would be in the interest of justice that the application of the accused u/s 94 CrPC for their production is allowed. Otherwise, it would incur unnecessary delay, expense, and inconvenience to recall the prosecution witnesses at the stage of the defence evidence only for the purpose of confronting them with such documents.

12. The Supreme Court has finally determined that even before the commencement of the trial, an accused can apply to the trial Court to exercise its power u/s 94 CrPC and direct the prosecution or the complainant to produce a document in its or his possession or power, which is not covered section 241-A/265-C CrPC, if the production of such document is necessary or desirable for the purpose of the inquiry or trial. And that an accused, before entering on his defence, can make an application for the production of a document u/s 94 Cr.PC despite provision of section 265-F(7) Cr.PC, which essentially provides for a similar opportunity to him at the stage of defence evidence.

13. From such authoritative determination based on elaborative construction of the subject in hand, we have learnt as follows;

i) that where due to dishonesty, negligence or any other reason, the prosecution does not produce any relevant document along with the police report and therefore due to such reason, they are not supplied to the accused u/s 241-A/ 265-C CrPC, then it is not fair to reject request of the accused for providing such documents u/s 94 CrPC, and let him suffer the ordeal of protracted trial and to make him wait to produce the same in defence in terms of 265-F(7);

ii) that when the accused is legally required to confront the prosecution witnesses in their cross examination with certain documents, not supplied to him in terms of section 241-A/265-C Cr.PC, then it would be in the interest of justice to provide him copies of those documents by exercising jurisdiction u/s 94 CrPC, so as to avoid unnecessarily delay, expenses and inconvenience to recall those witnesses at the stage of defence evidence for the purpose of confronting them such documents;

iii) that when an accused applies to the Court to exercise powers u/s 94 CrPC and direct the prosecution or the complainant to produce a document, not covered u/s Section 241-A/ 265-C Cr.PC, specially when such documents are necessary or desirable in the inquiry or trial, then despite provision of section 265-F(7) CrPC, the Court shall make an order for production of said documents u/s 94 CrPC. And that it is so because the Court is a natural arbitrator and it does not act for either the prosecution or the accused and because it is duty of the Court to dispense justice.

14. In the light of above, we are of a affirm view that the application filed by the applicant is competent, and he is entitled to production of all such documents as are found necessary and desirable for the purpose of holding a fair trial against him. Learned counsel for the applicant, during his arguments, has drawn our attention to a statement available at page-21, of the file containing four documents, which according to him, have not yet been supplied to him. The details of these documents are as under:

a) Copy of specimen signatures forwarded to FIA HQ.

b) Copy cheques bearing No.09546755 to 09546757, 09546773 and 25932728.

c) Copy of Teller day Book bearing No.TMRB0083

d) Copy of Memo of Handing /Taking over.

15. We, while deciding this criminal revision application in affirmative direct the trial Court to provide copies of all such documents as above immediately to the applicant for the purpose and compliance as explained above.

This Criminal Revision Application is disposed of in above terms along with pending application(s).

J U D G E

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Rafiq/P.A.