

# **JUDGMENT SHEET**

## **ISLAMABAD HIGH COURT, ISLAMABAD,** **JUDICIAL DEPARTMENT**

**Criminal Revision No.84/2019**

Ch. Muhammad Usman

*versus*

The State through Dr. Hafsa Karam Elahi, DRAP, Islamabad.

Petitioner by: Mr. Ali Nawaz Kharal and Rana Rashid Javed,  
Advocates.

Respondent by: Mr. Saqlain Haider Awan, AAG.  
Mr. Tanveer Iqbal, Advocate for Respondent.  
Nadeem, Inspector, FIA.

Date of Decision: 15.01.2020.

**MOHSIN AKHTAR KAYANI, J:** The petitioner through the instant criminal revision petition has called in question order of the learned Drug Court, Islamabad dated 14.05.2019, whereby petitioner's application/request filed under Section 265-C read with Section 94 Cr.P.C. for production of documents has been turned down.

2. Brief facts referred in the instant criminal revision petition are that a criminal case FIR No.5, dated 06.03.2018, under Section 109 PPC read with Sections 23 & 27 of the Drugs Act, 1976, P.S. FIA Anti-Corruption Circle, Islamabad has been registered against the petitioner being the Owner/Proprietor/Director of M/s Everest Pharmaceuticals for allegedly manufacturing spurious drugs. During the proceedings, the petitioner filed an application under Section 265-C Cr.P.C. read with Section 94 Cr.P.C. for production of certain documents on record, which was dismissed by the learned Drug Court, Islamabad vide impugned order dated 14.05.2019. Hence, the instant criminal revision petition.

3. Learned counsel for petitioner contended that the instant proceedings have been lodged against the petitioner on the complaint of DRAP in pursuance of Drugs Act, 1976 and DRAP Act, 2012, and as such, both the said Acts provide a mechanism for launching of any prosecution and any irregularity thereto

would vitiate the very proceedings; that the petitioner filed application under Section 265-C Cr.P.C. read with Section 94 Cr.P.C. to summon requisite documents in order to determine whether the prosecution of the petitioner is lawful or against the lawful authority; that it has been held in various judgments of the apex Court that Sections 94 and 265-C of the Cr.P.C. give wide powers to the learned trial Court to summon and allow to produce documents at any stage of the case, but the learned trial Court in a very harsh manner and against the spirit of natural justice has passed the impugned order without reasoning, therefore, the same may be set-aside and direction may be issued to the learned Drug Court, Islamabad to summon the requested documents.

4. Conversely, learned Additional Attorney General and learned counsel for respondent opposed the instant criminal revision petition and contended that the petitioner is motivated to linger on the matter and as such, compliance of Section 265-C Cr.P.C. has been done as all the requisite documents required by law have been provided to the petitioner; that documents are to be brought on record during the course of evidence through some record keeper or any other person whose evidence is necessary, hence, claiming documents at this initial stage is a futile exercise and is aimed to cause inordinate delay in the proceedings; that the learned Drug Court has rightly dismissed the application filed by the petitioner for production of documents, therefore, the instant criminal revision petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner, who is nominated accused in case FIR No.5, dated 06.03.2018, under Section 109 PPC read with Sections 23 & 27 of the Drugs Act, 1976, P.S. FIA Anti-Corruption Circle, Islamabad, wherein the final report under Section 173 Cr.P.C. has been filed before the Drug Court.

The petitioner has filed an application under Section 265-C read with Section 94

*crpc*  
~~QPC~~ for production of following documents.

- i. *Order passed by the Hon'ble Supreme Court of Pakistan to lodge FIRs.*
- ii. *Notifications of appointments and approvals by the Federal Government (Prime Minister and Cabinet) of:*
  - a. *Federal Drug Inspector on 6th March, 2018, U/S 17 of Drugs Act 1976.*
  - b. *Notification of appointment of Hafsa Karam Elahi, Additional Director QA&LT-I, Islamabad, U/s 17 of Drugs Act.*
  - c. *Notification of appointment of Babar Khan (Federal Drug Inspector) U/s 17 of Drugs Act.*
  - d. *Director QA&LT DRAP on 6th March 2018 and now U/S 4 of DRAP Act.*
  - e. *Director Registration on 6th March, 2018 and all till today (U/s 4 of DRAP Act, 2012).*
  - f. *Director Licensing on 6th March, 2018, and all till today (U/s 4 of DRAP Act, 2012).*
  - g. *Secretary Registration Board on 6th March, 2018 and all till today (U/s 5 of Drugs Act ).*
  - h. *All members of Registration Board on 6th March 2018 and all till today (U/s 7 of Drugs Act).*
  - i. *All members of Licensing Board since 2015(U/s 5 of Drugs Act).*
  - j. *Director QA&LT on 27th February, 2015, (U/s 4 of DRAP Act 2012).*
  - k. *Government Analyst U/s 16 of Drugs Act.*
  - l. *Approved Laboratory for drugs testing U/s 14 of Drugs Act.*
  - m. *All Federal Drug Inspectors of Pakistan since 2015 U/s 17 of Drug Act.*
  - n. *All members, Chairman and Secretary of Appellate Board U/s 9 of Drugs Act.*
  - o. *Chairman Registration Board U/s 7 of Drugs Act 1976.*
  - p. *Chairman Licensing Board U/s 5 of Drugs Act 1976.*
- iii. *Approval to lodge FIR by Federal Government U/s 30 of Drugs Act against Dr. Usman/Everest Pharma before 6th March, 2018 or on 6th March, 2018.*
- iv. *Approval to lodge any FIR by Federal Government U/s 30 of Drugs Act anywhere in Pakistan against Dr. Usman/Everest Pharma.*
- v. *All proceedings against accused/Everest Pharma by Registration Board (both minutes and letters issued).*
- vi. *All proceedings against accused/Everest Pharma by Licensing Board (both minutes and letters issued).*
- vii. *All advertisements published against accused.*

- viii. Attested copy of master file of Everest Pharma of Licensing Section.
- ix. Attested copy of master file of Everest Pharma of Registration Section.
- x. Registration copy of Inspection book of Everest Pharma.
- xi. Attested copy of Pakistan National Formulary U/s 8 of Drugs Act.
- xii. Import record of Everest Pharma of last ten years (all import invoices).

7. The request of the petitioner for summoning of the aforesaid record/documents has been turned down by learned Trial Court vide impugned order dated 14.05.2019 on the following grounds:

*"From the perusal of the record, it reveals that co-accused Dr. Kamran Izhar Qureshi filed an application U/S 265-D Cr.P.C. which was dismissed by this Court vide order dated 05-12-2018. The said order was assailed before Honorable Islamabad High Court, Islamabad. The Hon'ble Islamabad High Court, pleased to set-aside the above said order vide order dated 31-01-2019 and petition was removed remanded for afresh decision. The said petition was again dismissed by this Court vide order dated 26-03-2019 which order was challenged before Hon'ble Islamabad High Court, Islamabad. The Hon'ble Islamabad High Court, Islamabad pleased to dismissed the same vide order dated 01-04-2019. Whereas instant petition has been filed seeking documents mentioned in petition without assigning plausible and legally justified reason, as already the documents relied upon by the prosecution and appended with the complaint have been supplied to all the accused persons in compliance of Section 265-C Cr.P.C. before framing of charge. The charge against petitioner accused and co-accused has been framed on 30-04-2019. Now it is the prosecution first to leads its evidence, therefore, accused persons shall be provided opportunity to adduce or summon the evidence required for their defense. At this stage application filed by petitioner/accused Ch. Muhammad Usman is without any legal force. Hence the instant application U/S 265-C Cr.P.C. r/w 94 Cr.P.C. is hereby dismissed.*

8. We have gone through the record as well as the impugned order while considering the arguments advanced by both the parties in details and observed that the primary question raised by the petitioner in this case is that whether the petitioner can make any request for summoning of record, which is not part of final report under Section 173 Cr.P.C.?

9. In order to answer this question, we have confronted learned counsel for petitioner to justify the requirement of Section 265-C read with Section 94 Cr.P.C. qua the documents requested to produce before the Court, whereby he contended that most of the documents are pertaining to public record, whereas documents mentioned at serial No.(v) to (x) are private documents, which were not available due to the fact that petitioner's company i.e. M/s Everest Pharmaceutical was sealed by the FIA authorities on 06.03.2018 and as such, the private record could not be placed unless a permission is granted or the premises be de-sealed. Learned counsel for petitioner further contended that if the above referred documents are not allowed to be produced, petitioner's right of fair trial in terms of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 will be denied.

10. On the other hand, learned counsel for respondent contended that the criminal case has been lodged on the direction of apex Court as a result of proceedings conducted in HRC No.5845-G/2018, whereafter the FIR was lodged against the petitioner as he was allegedly involved in manufacturing of spurious drugs. Learned counsel for respondent further contended that the apex Court has passed numerous orders against the petitioner and his company M/s Everest Pharmaceutical, which left nothing in favour of the petitioner to claim the record of aforesaid documents in any manner. It is lastly contended that Section 265-C Cr.P.C. provides that specific documents be given to any accused person before proceedings further in the trial which are:

- (a) the First Information Report,
- (b) the police report,
- (c) the statement of all witnesses recorded under Sections 161 and 164 Cr.P.C.; and,

- (d) the inspection note recorded by the Investigating Officer on his first visit to the place of occurrence and the note recorded by him on recoveries made, if any.

As a matter of fact, the above referred material was already given to the petitioner and even charge has been framed on 30.04.2019 by the learned Trial Court.

11. Furthermore, the respondent side has also argued that after insertion of Section 265-F(7) Cr.P.C., the requirement of Section 94 Cr.P.C. has become redundant and concept of implied repeal has come into play.

12. We have attended all these factors while placing relevant provisions of Section 265-C Cr.P.C. and Section 94 Cr.P.C. in juxtaposition with Section 265-F(7) Cr.P.C., whereby it has been observed that Chapter XXII-A of the Cr.P.C. deals with the trial in which a concept and step-wise procedure has been laid down to facilitate the accused person in order to refer all the incriminating material, statements and police investigation reports enabling him to make his own defence so that the concept of fair trial as envisaged under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 is not hampered.

13. Chapter-VII of the Criminal Procedure Code, 1898, particularly Section 94 of the Cr.P.C., has provided vast powers to the Court to entertain and allow production of documentary evidence during the trial/inquiry, etc. Furthermore, recording of an objection of other side in the proceedings that documents sought to be produced are inadmissible or cause delay in the proceedings is irrelevant. Reliance is placed upon 2002 SCMR 468 (Abdul Hamid Mian v. Muhammad Nawaz Kasuri). Section 94 of the Cr.P.C., *prima facie*, authorizes the Magistrate or police officer for the purpose of any investigation, inquiry, trial or any other proceedings to call upon any person in whose possession or power a document or a thing is believed to be and to direct him to attend and produce the same at the time and place stated in summon or order. Such power extended to the court

and Investigating Officer is based upon the logic and rationale to unearth the truth in any criminal case, notwithstanding it favors the accused or the prosecution, as the case may be. The powers conferred under the said Section are also to be used for and against both sides of criminal trials where the witnesses were not mentioned in the calendar of witnesses in final report due to any inadvertent mistake by the police officer, but the Court can proceed and summon the record through any witness for the purpose of just and fair trial as administration of criminal justice requires that due opportunity be given to the parties, which is the core of principle of fair trial. Reliance is placed upon 2016 P.Cr.LJ 1103 (Ghulam Umer Memon vs. Jabbar Satti).

14. The petitioner is claiming the production of documents, which were essential for just decision of the case and as such, the respondent side failed to establish on record that there was any embargo or restriction for production of such documents. Reliance is placed upon 2012 YLR 1192 Lahore (Abdul Razzaq vs. The State). Although, the supply of statement and documents to the accused has been separately prescribed in terms of Section 265-C Cr.P.C. which is only to enable the accused to effectively cross-examine the witnesses knowing all the facts and circumstances under which the witnesses had made their statements before the police and those witnesses might not, necessarily, be cited as prosecution witnesses, but could, otherwise, be truthful witnesses and supply of statement could help the accused to build up his defence in a proper manner. The accused, therefore, was entitled as a matter of right to get the copies of such statement to confront the witnesses with the same. Failure to provide such copies to accused would prejudice his case and non compliance of the provision of Section 265-C Cr.P.C., being vital in nature, would vitiate the trial. Reliance is placed upon 1999 P.Cr.LJ 496 Lahore (Muhammad Akram vs. The State). Hence, the logic to protect the rights of accused in terms of Section 265-C Cr.P.C. could further be extended by exercising power under Section 94 Cr.P.C. for all those

record and documents, which are essential as per the perspective of accused and the same could not be denied in any manner.

15. The reference of Section 265-F(7) Cr.P.C. deals with the right of the accused person when he enters into his defence after recording of his statement under Section 342 Cr.P.C., whereby he can apply to the court *for issuance of any process for compelling the attendance of any witness for examination or the production of any document or other thing*, as such, this provision is applicable after the completion and conclusion of prosecution evidence, whereas in this case the charge has been framed and petitioner is claiming the documents referred above, majority of which are public record relating to appointment, notification, registration, license, permissions, approvals of drugs inspector, authorities, board and its orders, which are just required for the Drug Court for its exercise of jurisdiction under the law.

16. We truly believe that the documents claimed by the petitioner, if not produced on record, the petitioner will not be able to ask relevant questions in cross-examination of the prosecution witnesses, who are official witnesses of DRAP and other relevant agencies. It is necessary for the accused person i.e. the petitioner to establish his defence as to whether the authority, which has passed the order against him qua allegation of spurious drugs, has performed duties in accordance with DRAP Act, 2012 and Drugs Act, 1976, which could only be determined by placing all those notifications and approvals on record, therefore, any restriction, if imposed, and withholding of those documents and information, might cause an irreparable loss to the petitioner qua his right to fair trial.

17. In view of above background, the instant criminal revision petition is hereby ALLOWED and the impugned order dated 14.05.2019 is SET ASIDE as no valid justification has been referred in the said order for withholding of record/documents referred in the application submitted by the petitioner. The



application filed by the petitioner for production of documents referred in Para-4 i.e. at Serial (i) to (xii) are allowed to be produced before the court by the Drugs Inspector by all means before proceeding further in the trial. The prosecution is directed to produce the relevant record within the period of 15 days and copies thereof be handed over to the petitioner.

~~(GHULAM AZAM QAMBRANI)~~  
JUDGE

~~(MOHSIN AKHTAR KAYANI)~~  
JUDGE

Khalid Z.