

### **Amendment in Section 94 of the Code of Criminal Procedure 1898**

The Lahore High Court vide their letter No. 268/Legis, dated 22<sup>nd</sup> February, 2007 proposed to consider the amendment by incorporating the Courts section 489-F of the Pakistan Penal Code, 1860, in sub-clause (a) of proviso to sub-section (1) of section 94 of the Code of Criminal Procedure, 1898, so as to make the said section consistent with the incorporation of section 489-F in Pakistan Penal Code.

Section 94 Cr.P.C is reproduced below;

**“94.** – (1) Whenever any Court or any officer in charge 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, and relates or might disclose any information which relates, to the bank account of any person except,-

- (a) for the purpose of investigating an offence under sections 403, 406, 408 and 409 and sections 421 to 424 (both inclusive) and sections 465 to 477A (both inclusive) of the Pakistan Penal Code, with the 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.”

The proviso to sub-section (1) of section 94 explicitly prohibits the production of any document or any other thing which is in the custody of a Bank or Banker which relates to the Bank account of any person except for the purpose of investigation of an offence under the specified sections as enumerated in clause (a) of proviso to section 94, with the permission in writing of a Sessions Judge. Section 489-F of the Pakistan Penal Code, which is added in 2002 is not mentioned in clause (a), therefore, the Bank or Banker is not obliged to produce dishonoured cheque before the investigating officer. The Sessions Judge is also not authorized to give permission to the Bank to produce the dishonoured cheque or statement of account of the accused before the investigating officer. The dishonoured cheque which is the main bone of contention and forming an offence, after an F.I.R is registered with Police Station, may be considered necessary along with Bank account of the accused in the investigation, inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898, therefore, unless section 489-F of the Pakistan Penal Code, 1898, is inserted in clause (a) to the proviso of section 94 of the Code of Criminal Procedure, the Sessions Judge can not pass an order for production of dishonoured cheque before the relevant authority.

Accordingly, it is proposed to insert section 489-F in clause (a) to the proviso of sub-section (1) of section 94 Cr. P. C. The comparative table and Bill follows;

**Amendment in section 94 of the Code of Criminal Procedure, 1898.**

Existing Provision	Proposed Provision
94. – (1) Whenever any Court, or any officer in charge of a police station considers that the production of any document of other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other	

<p>proceeding under this Code by or before such Court or officer, such court may issue a summons, or such officer written order, to the person in whose possession or power such document or thing in believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or border.</p> <p>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, and relates, or might disclose any information which relates, to the bank account of any person except, -</p> <p>(a) for the purpose of investigating an offence under sections 403, 406, 408 and 409 and section 421 to 424 (both inclusive) and sections 465 to 477A (both inclusive) of the Pakistan Penal Code, with the prior permission in writing of a Sessions Judge.</p>	<p>No amendment</p> <p>(a) for the purpose of investigating an offence under sections 403, 406, 408 and 409 and section 421 to 424 (both inclusive) and sections 465 to 477A (both inclusive) <b>and 489-F</b> of the Pakistan Penal Code, with the prior permission in writing of a Sessions Judge.</p>
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**A**  
**Bill**

further to amend the Code of Criminal Procedure, 1898

**Whereas** it is expedient to amend the Code of Criminal Procedure, 1898 (Act V of 1898) for the purpose hereinafter appearing;

It is hereby enacted as follows:-

**1. Short title and commencement.** – (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2009.  
(2) it shall come into force at once.

**2. Amendment of Section 94, Act V of 1898.** - In the Code of Criminal Procedure, 1898 (Act V of 1898), in section 94, in sub-section (1), in proviso, in clause (a), after the bracket and words “**(both inclusive)**” occurring second time, the word, figure and letter “**and 489-F**” shall be inserted.

**Commission’s Deliberations on 05 December, 2009**

The Commission approved incorporation of section 489-F of the Pakistan Penal Code 1860 in sub-clause (a) of proviso to sub-section (1) of section 94 of Cr.P.C 1898. The object is to enable the Sessions Judge to call for bank record pertaining to the cheque which has been dishonoured.