

(2025) 06 JH CK 0936
In the Jharkhand High Court
Case No : Cr.M.P. No.1749 Of 2019

Sangita Kumari @ Sangeeta Kumari

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 25-06-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 406

Citation : (2025) 06 JH CK 0936

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Ashish Kumar, Nehala Sharmin, Gautam Kumar, Ashutosh Kumar Sinha

Final Decision : Allowed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash the order taking cognizance dated 05.06.2017 along with the entire criminal proceeding in connection with T.R. Case No.188 of 2019 arising out of P.C.R. Case No.844 of 2015 corresponding to G.R. Case No.82 of 2015.

3. The brief facts of the case is that the petitioner entered into an agreement for running the business of Customer Service Point (CSP). The security money was given to the co-accused Sunil Kumar Sinha to run three codes of the CSP as per the arrangement but the accused only gave one code to the complainant. On the basis of the protest petition filed by the informant-complainant as well as the statement on solemn affirmation of the informant-complainant and the statement of the enquiry witnesses, the learned Sub-Divisional Judicial Magistrate, Rajmahal found prima facie case against the petitioner for the offence punishable

under Section 406 of the Indian Penal Code.

4. Learned counsel for the petitioner relies upon the judgment of the Co-ordinate Bench of this Court in the case of M/s. Hi-Tech Chemicals Pvt. Ltd., through its Managing Director, Sri R.K. Agarwal vs. State of Jharkhand reported in 2015 (2) JCR 474 (Jhr) and submits that in that case as the informant of that case chose the shortcut method for enforcing a breach in contract of obligation by resorting to instituting the criminal case, instead of an appropriate civil remedy available; the Co-ordinate Bench of this Court quashed the entire criminal proceeding. Learned counsel for the petitioner next submits that the allegation against the petitioner is false. Even assuming for the sake of argument that the entire allegations made against the petitioner are true, still in the absence of any material in the record to show any entrustment of any money or property to the petitioner; the question of dishonest misappropriation of the entrustment of any money or property does not arise and in absence of this essential ingredient, the offence punishable under Section 406 of the Indian Penal Code is not made out. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

5. Learned Spl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioner and submit that though it has not been specifically mentioned that the petitioner cannot be arrayed as an accused with the aid of Section 120B of the Indian Penal Code, she has been tried with the criminal conspiracy with the co-accused. It is next submitted that the co-accused namely Sunil Kumar Sinha who also filed Cr.M.P. No.3297 of 2018 has withdrawn the same with liberty to raise all the grounds taken in this Criminal Miscellaneous Petition before the appropriate court at the appropriate stage. Hence, it is submitted that this Criminal Miscellaneous Petition, being without any merit, be dismissed.

6. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that there is absolutely no allegation of any money or property being entrusted to the petitioner. There is also no allegation against the petitioner that the petitioner committed the offence in criminal conspiracy with the co-accused person. There is not even any whisper regarding the same anywhere in the record.

7. Under such circumstances, keeping in view the admitted case of the prosecution that there was no entrustment of any money or property to the petitioner, the question of dishonest misappropriation of the same on the part of the petitioner does not arise and in the absence of essential ingredients that the dishonest misappropriation of any entrusted money or property, this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in their entirety, still the offence punishable under Section 406 of the Indian Penal Code is not made out against the petitioner. Hence, continuation of this criminal proceeding will amount to abuse of process of law. Therefore, this is a fit case where the order taking cognizance

dated 05.06.2017 along with the entire criminal proceeding in connection with T.R. Case No.188 of 2019 arising out of P.C.R. Case No.844 of 2015 corresponding to G.R. Case No.82 of 2015 be quashed and set aside qua the petitioner only.

8. Accordingly, the order taking cognizance dated 05.06.2017 along with the entire criminal proceeding in connection with T.R. Case No.188 of 2019 arising out of P.C.R. Case No.844 of 2015 corresponding to G.R. Case No.82 of 2015 is quashed and set aside qua the petitioner only.

9. In the result, this Criminal Miscellaneous Petition is allowed.