

**CRMMO No. 121 of 2009**

30.11.2009 Present:- Mr. Y.P.Sood, counsel for the petitioner.

Mr. N.K.Thakur, counsel for the respondents.

This is a petition under Article 227 of the Constitution of India read with Section 482 Cr.P.C. against the order dated 17.9.2009 whereby the learned Judicial Magistrate, Court No.3, Una has closed the evidence of petitioner herein. On 10.9.2009, the learned Judicial Magistrate, had passed the following order:-

“10.9.2009 Present: Sh.H.B.Chander, Adv. for the petitioner.  
Ms. Seema Sharma, Adv. For the respondent.

Two RWs present and examined. Further time prayed. Granted. Let remaining RWs be summoned for 17.9.2009 on filing of PF and DM within three days. Dasti, if required be also issued.”

On 17.9.2009, the learned Judicial Magistrate, had passed the following order:-

“17.9.2009. Present: Sh.H.B.Chander, Adv. for the petitioner.  
Ms. Seema Sharma, Adv. For the respondent.

No RWs present. Further time prayed. Prayer considered and declined. The respondent evidence closed by the order of the Court. Be put up for arguments on 8.10.2009.”

There is nothing in the order dated 17.9.2009 that the witnesses of the petitioner herein were served for the

date i.e. 17.9.2009 or whether the petitioner had taken steps for service of the witnesses. It has been submitted by learned counsel for the petitioner that petitioner had taken steps for service of Dr. J.C. Sharma witness for 17.9.2009 and in fact the witness was even served. In these circumstances, there is no fault of the petitioner for not producing the witness on 17.9.2009. In the facts and circumstances of the case, the order dated 17.9.2009 is not sustainable and is accordingly, set-aside. The petitioner is given an opportunity to produce witness Dr. J.C.Sharma, Project Incharge, through Head of Department, Department of Soil Sciences and Water Management, Dr. Y.S.Parmar University, Nauni, District Solan, on the date to be fixed by the learned Judicial Magistrate, Court No.3, Una. In case despite the service of the said witness he fails to appear in the court, the Court will take coercive steps for appearance of said witness in the Court. The parties through their counsel are directed to appear before the learned Judicial Magistrate, Court No.3, Una, on 16.1.2010 as already fixed. The petition stands disposed of.

**Cr.M.P. No. 618 of 2009**

Infructuous.

**November 30, 2009.**  
(GR)

**( Kuldip Singh )**  
**Judge.**