

Satya Securities and anr. Vs. Ms. Uma Erry and anr.

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Court : Himachal Pradesh

Decided On : Apr-02-2002

Reported in : I(2003)BC341,2002CriLJ3714

Judge : Kuldip Chand Sood, J.

**Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 72 and 446; ;
[Negotiable Instruments Act, 1881](#) - Section 138**

Appeal No. : Crl. M.M.O. No. 9 of 2002

Appellant : Satya Securities and anr.

Respondent : Ms. Uma Erry and anr.

**Advocate for Def. : Rakeshwar Lal Sood, Adv. for Respondent No. 1 and;
Sandeep Kasuhik, Asst. Adv. General for Respondent**

Advocate for Pet/Ap. : Deepak Bhasin, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Kuldip Chand Sood, J.

1. These two petitions (Cr. M.M.O. Nos. 9 and 10 of 2002) arise out of same orders passed by learned Judicial Magistrate 1st Class (II), Shimla on 10.1.2002 and 15.1.2002.

2. It appears, respondent-Mrs. Uma Erry had filed a complaint under Section 138 of the Negotiable Instruments Act, against the petitioner-M/s. Satyam Securities. Mr. Sham Ahuja and Ms. Anju Sham Lal Ahuja were also impleaded as accused in their capacity as proprietor/ authorised officer of the company. It appears, when the case came up before the Court on 1.12.2001, the Presiding Officer was on leave and it was listed for 20.12.2001 for proper orders.

3. On 20.12.2001, neither the accused nor the complainant was present. However, Special Attorney of the complainant was present. Learned Trial Magistrate in his wisdom directed that accused-petitioners be served through their Counsel Mr. Y.P. Rana, Advocate for 10.1.2002. On 10.1.2002 in the similar circumstances, the Court once again directed that accused-petitioners be served through their Counsel Mr. Y.P. Rana, Advocate, for 15.1.2002 on filing of fresh process fee. When the matter came up before the Court on 15.1.2002, neither accused nor their Counsel was present. The learned Trial Magistrate in this background, cancelled the personal surety bonds of the accused and proceeded to forfeit the amount of bonds to the State. He further made orders for the issuance of non-bailable warrants against the accused for 16.3.2002. Proceedings under Section 446 of the Code of Criminal Procedure were also directed to be initiated against the accused and sureties.

4. Aggrieved, the accused are in this revision.

5. I have heard the learned Counsels for the parties.

6. Orders dated 20.12.2001, 10.1.2002 and consequent order dated 15.1.2002 are on the face of it illegal and not in accordance with law. The case, record shows, was directed to be listed for 20.12.2001 for proper orders as the learned Magistrate happened to be on leave on the previous date of hearing. Therefore, the accused were not bound to be present in the Court on 20.12.2001. It was not open to the learned Trial Magistrate to have directed the service of the accused through

Counsel. The procedure adopted by the learned Magistrate is alien to the Code of Criminal Procedure. If at all he was satisfied that the accused are evading service or were wilfully not appearing in the Court then coercive measures could be adopted but only against the accused. The orders passed by the learned Trial Magistrate on 15.1.2002 cancelling the personal and surety bonds of accused and forfeiting them to the State and also issuance of non-bailable warrants for their appearance in the Court are unsustainable in law and facts.

7. In the result, the petitions are allowed. Orders dated 20.12.2001, 10.1.2002 and 15.1.2002 are set aside. The accused shall appear before the Trial Court on 30.4.2002. The case thereafter shall be proceeded in accordance with law by the learned Trial Magistrate.

8. In view of the orders passed in the main petition, these petitions do not survive and stand disposed of. Interim order dated 15.3.2002 shall stand vacated.

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