

**(2010) 07 AHC CK 0198**

**Allahabad High Court**

**Case No:** Writ Petition No. 11469 of 2007

Hari Machinery Stores, Maholi

APPELLANT

Vs

Patliputra Agro Private Ltd.and  
others

RESPONDENT

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**Date of Decision:** July 26, 2010

**Acts Referred:**

- Negotiable Instruments Act, 1881 (NI) - Section 138

**Hon'ble Judges:** Ashwani Kumar Singh, J

**Final Decision:** Dismissed

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### **Judgement**

Ashwani Kumar Singh, J.

This petition under Section 482 Cr.P.C. has been preferred for quashing the order dated 4.4.2006 and complaint case no.(956/05) 591 of 2006, M/s Pataliputra Agro Pvt. Ltd. Vs. M/s Hari Machinery Stores, u/s 138 of Negotiable Instrument Act, P.S. Gwaltoli, District Kanpur Nagar, pending in the court of A.C.M.M.II, Kanpur Nagar.

2. This case was heard by me on 6.7.2010 and orders were passed, dismissing the petition under Section 482 Cr.P.C., but inadvertently, the order transcribed was "List this case in the second week of August, 2010. Interim order, if any, is extended till the next date of listing."

3. Learned counsel for the opposite parties moved application (Crl.Misc.Application No.201487/10) apprising this court of the order passed in the court on 6.7.2010, as such, the application came up for consideration on 21.7.2010 and since no time was left, it was ordered that it may come up on 23.7.2010. On 23.7.2010, learned counsel for the applicant was not present so it was again ordered that the case may come up on 26.7.2010 i.e. today.

This case was called out today and learned counsel for both the parties are present.

4. Today, again I have heard the learned counsel for the applicant, who submits that in the present case, he had sent a notice on 9.12.2004 to the respondents that the applicant's three blank and undated cheques, three blank letter pads and Form 31 may be returned back. Learned counsel further submits that complaint was filed, thereafter, on 10.2.2005. Learned counsel contends that since he had sent a notice earlier to the filing of the complaint, as such, the complaint is illegal and the summoning order dated 4.4.2006, is also bad in law.

5. However, learned counsel for the respondents has vehemently contended that there is no illegality in the complaint filed by the respondents and also in the summoning order, which was passed by the learned A.C.J.M.II, Kanpur Nagar.

6. Hon"ble the Supreme Court in M/s Modi Cements Ltd. Vs. Kuchil Kumar Nandi reported in AIR 1998 SC 1057 has observed in para 16 as under:

"We see great force in the above submission because once the cheque is issued by the drawer a presumption under section 138 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action under Section 138 of the Act by the drawee or the holder of a cheque in due course. The object of Chapter XVII, which is instituted as "OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS" and contains Section 138 to 142, is to promote the efficacy of banking operations and to ensure credibility in transacting the business through cheques. It is for this reason we are of the considered view that the observation of this Court in Electronics Trade & Technology Development Corporation Ltd., Secunderabad, (1996 AIR SCW 840) (Supra) in paragraph 6 to the effect "Suppose after the cheque is issued to the payee or to the holder in due course or before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions, Section 138 does not get attracted," does not fit in with the object and purpose for which the above chapter has been brought on the Statute Book."

7. In the light of the observations made by Hon"ble Supreme Court, there is no illegality or infirmity in the order dated 4.4.2006 and complaint case no.(956/05) 591 of 2006, M/s Pataliputra Agro Pvt. Ltd. Vs. M/s Hari Machinery Stores, u/s 138 of Negotiable Instrument Act, P.S. Gwaltoli, District Kanpur Nagar.

8. After considering the arguments of learned counsel for either parties and the legal proposition laid down by Hon"ble Supreme Court, I feel that the complaint as well as the order of summoning dated 4.4.2006 is well in conformity with law and do not suffer from material irregularities or illegalities, therefore, it does not warrant any interference in this application under Section 482 Cr.P.C. The application under Section 482 Cr.P.C. has no force and is hereby dismissed.