ANALYSIS OF THE INHERENTLY FLAWED CASE OF DASHRATH RUPSINGH RATHOD: A FASCINATING PARADOX OF A JUDGMENT FALLING AGAINST THE INTERESTS OF THE AGGRIEVED

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Abstract

Through this article the authors try to establish an unprecedented contention that a recent judgment pronounced by the Apex Court in Dashrath Rupsingh Rathod v. State of Maharashtra is inherently flawed and hampers the interests of the aggrieved in relation to the issue of territorial jurisdiction of a court to try an offence under Section 138 of the Negotiable Instruments Act, 1881. The authors would thereby suggest their humble yet original recommendations to tone down the damage that has already been done and to ward off a consequential disaster. As per the judgment passed by the Hon'ble Judges, currently, a complaint under Section 138 of the N.I.A, 1881 is maintainable only in the Court within whose jurisdiction the drawee bank is situated. However, this attracted widespread reaction from all across the

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nation as it bent the law heavily in favor of the accused. Thus, this article seeks to critically analyze the issue of commission of an offence under section 138 of the Act. Starting with the legislative intent of the parliament, the article opens up to discuss the shortcomings in the interpretation of the issue by the Hon'ble judges while deciding the matter. Secondly, it deals with the practical repercussions and economic consequences arising out of the judgment. And lastly, the authors have also highlighted the court's failure to appreciate certain important issues, ranging from "jurisprudential aspects" to question of territorial jurisdiction of courts in relation to dishonor of "at par cheques." Consequently, public interest, commercial transactions and economy of our country have suffered a huge set back. Keeping in mind legal incongruities outlined above along with the practical applicability of their recommendations, the authors suggest an immediate re-consideration of the issue by both the legislative and judicial authority with an aim to balance the ends of justice.

I. INTRODUCTION

The Supreme Court of India recently delivered a landmark judgment[1] pertaining to the territorial jurisdiction of a court to try an offence

[1]Dashrath Rupsingh Rathod v. State of Maharashtra & Anr., (2014) 9 SCC 129.

under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "**the Act**"). The Apex Court has made it abundantly clear that a complaint under section 138 of the Act is maintainable only in the Court within whose jurisdiction the drawee bank is located. However, the authors would go on to establish this groundbreaking contention that this crucial judgment is logically flawed and runs contrary to the statement of objects & reasons as well as the legislative intent of the Act. Simultaneously, the authors would try to prove that this impactful judgment would have serious repercussions on the smooth functioning of commercial transactions nationwide and thereafter, adversely affect the economy of the country. Therefore, the authors seek to critically analyze the judgment and suggest the building up of a consensus in favor of the introduction and incorporation of appropriate legislative measures required to mitigate this situation.

II. FACTS OF THE CASE

The Hon'ble Supreme Court of the country received a number of appeals filed under Section 138 of the Negotiable Instruments Act, 1881 pertaining to the question related to a court's territorial jurisdiction in criminal complaints. Every appeal comprised of dissimilar facts and circumstances, although, the question of law involved remained the same i.e. what should be the place of judicial investigation for the trial of offences under Section 138 of the Act read with Section 177 to 179 of the Code of Criminal Procedure, 1973.

Previously, a division bench of the Apex Court in the case of *K. Bhaskaran v. Sankaran Vaidhyan Balan*[2] had held that a trial for the

[2]K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510.

criminal offence of dishonor of a cheque, as per Section 138 of the Act could be taken up before a court within the local limits of which any of the hereafter provided five acts were committed: (i) presentment of the cheque to the bank; (ii) drawing of the cheque; (iii) giving a notice in writing to the drawer of the cheque and thereby demanding payment of the cheque amount; (iv) returning the cheque by the drawee bank; and/or (v) failure of the drawer of the cheque to make payment of the cheque amount within the statutory period. Bhaskaran's decision gave the rationale that offences as provided under Section 138 could be said to originate only upon the satisfaction of all the above stated five acts and since Section 178 (d) of the Code of Criminal Procedure provided that where an offence consists of several acts done in different local areas, it may be enquired into or tried by a court having jurisdiction over any such local area. Therefore, a complainant could come under any such court.

Although the Supreme Court became inconsistent with its own previous decisions made in the Bhaskaran's case, this case was finally overruled, in the decision of the Supreme Court in the case of Dashrath Rupsingh Rathod. In the current case, the Supreme Court relied heavily on its two important decisions pronounced previously, one was the judgment of *Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.*[3] case, decided by a three-judge bench and the other was the *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd*[4] case, decided by a division bench.

In the case of Ishar Alloy the court held that it was not sufficient that the presentment of the cheque by a payee to his bank was within the period of validity of the cheque. In fact, the cheque has to be brought

[3]Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., (2001) 3 SCC 609.
[4]Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720.

to the drawee bank within the cheques period of validity for any offence to fall within the ambit of Section 138. This case has been decided prominently unlike to the Bhaskaran's case, though it hasn't overruled it entirely. The latter was never even considered while decided the Ishar Alloy case.

In Harman Electronics, it was held that the return of the cheque by the drawee bank itself constitutes an offence under Section 138 and the conditions imposed in the Proviso of the section are only conditions that are to be complied with by the complainant before the court gets entitled to take cognizance of the matter. It was observed that the issue of receipt gave rise to a cause of action under Section 138 but the issue of notice did not. It was also held that allowing submission of a cheque for deciding jurisdiction of a court would lead to the harassment of a drawer of the cheque.

Owing to all the above mentioned factors, the Court in the present case relied on Ishar Alloy to hold that if what was relevant was the submission of the cheque to the drawee bank, it logically followed that the venue of the drawee bank (not the payee's bank), could bestow jurisdiction upon a court alone.

Finally, the Supreme Court said that on reading of Section 138 of Act along with Section 177 of Code of Criminal Procedure, which states that "every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed", there is certainty that the return of the cheque by only the drawee bank embodies the offence and indicates the place where the offence was committed.

III. JUDGMENT

The Hon'ble Supreme Court, while dealing with the issue of territorial jurisdiction of a court to try a matter under section 138 of the Act, held that in cases of dishonor of cheque, only those courts within whose territorial limits the drawee bank is situated would have the jurisdiction to try the case. The Supreme Court has summed-up the law relating to the offence punishable under Section 138 of the Act, in the following manner:[5]

i. An offence under Section 138 of Negotiable Instruments Act, 1881 is committed no sooner than a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.
ii. Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of the proviso to Section 138.
iii. The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if:
    a. The dishonored cheque is presented to the drawee bank within a period of six months from the date of issue.
    b. The complainant has demanded payment of the cheque amount within thirty days of receipt of information by him from the bank regarding the dishonor of the cheque, and

[5] *Supra* note 1, at ¶31.

c. The drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

iv. The fact constituting the cause of action does not constitute the ingredients of the offence under Section 138 of the Act as well.

v. The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time that the cause of action in terms of clause (c) of the proviso accrues to the complaint.

vi. Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonored.

vii. The general rule stipulated under section 177 of CrPC. applies to cases under Section 138 of the negotiable Instrument Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonor takes place except in situations where the offence of dishonor of the cheque place except in situations where the offence of dishonor of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 20 thereof.

Further, the following issues arise out of the judgement of the Hon'ble Supreme Court in Dashrath Case that require immediate consideration in the light if the grave consequences and strict interpretation adopted by the respected judges. The issues can be summed up as following

A. Civil Law Concepts-Not Strictly Applicable

The Court cautioned that the phrase "cause of action" in Section 138 should not be assigned the same interpretation provided under civil law. Discussing the scope and application of Sections 177-179 of the CrPC, the Court held that the territorial jurisdiction in criminal matters, including under the Act, is determined solely by location of the commission of offence.[6]

a) Jurisdiction With Court Where Drawee Bank Is Situated

The Court held that under Section 138 of the Act, the offence is committed when the drawee bank returns the cheque unpaid. The proviso to Section 138 of the Act, merely postpones the prosecution of the offender till the time that he fails to pay the amount within 15 days of the statutory notice.

The place of commission of the offence would be the place where the drawee bank is located (and, consequently, where the cheque is dishonored). Thus, courts of such place would have the territorial jurisdiction to try the offence under the Act.

The Court clarified that nothing would prevent an aggrieved person from availing other remedies under the Indian Penal Code or the CrPC. Where a payee was able to establish that the inducement for accepting a cheque which subsequently was dishonored had occurred where he resides or transacts business, he will not have to suffer the travails of journeying to the place where the cheque had been dishonored.[7]

[6] *Supra* note 1, at ¶14.
[7] *Supra* note 1, at ¶¶15-19.

b) Pending Cases

Having decided the issue of appropriate territorial jurisdiction, the Court considered the various options available in regard to the cases that are pending before the various Courts in India. The Court held that:

i. Where proceedings had progressed to the stage of recording of evidence or beyond, the proceedings would continue before the same courts and it would be deemed that the Court had transferred the case from the Court of proper jurisdiction to the Court where such case was pending.
ii. For the remaining cases, including where the accused had not been properly served, the complaints would be returned to the complainants for filing in the proper court. If such complaints are filed within 30 days of their return, they shall be deemed to have been filed within the limitation period (unless the initial complaint was itself time barred).[8]

IV. CRITICAL ANALYSIS OF THE JUDGMENT IN LIGHT OF PREVAILING LAW

[8] *Supra* note 1, at ¶20.

A. Legal Provisions

a) Section 138 of the Negotiable Instruments Act, 1881

"*138. Dishonor of Cheque for insufficiency, etc., of funds in the account: Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing of the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this session shall apply unless-

a. *The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.*
b. *The payee or the holder in due course of the cheque, as the case may be makes a demand for the payment of the said amount of money giving a notice in writing to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.*
c. *The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

Explanation: For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

B. Statement of Objects and Reasons

The Act was enacted and Section 138 thereof incorporated with a specified object. The statement of objects and reasons appended to the bill explaining the provisions of the new Chapter read as follows:[9]

"*This Clause [Clause (4) of the Bill] inserts a new Chapter XVII in the Negotiable Instruments Act, 1881. The provisions contained in the new Chapter provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangement made by the drawer of the cheque with the bankers for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque or with both. The provisions have also been made that to constitute the said offence-(a) Such cheque should have been presented to the bank within a period of six months of the date of its drawl or within the period of its validity, whichever is earlier, and (b) The payee or holder in due course of such cheque should have made a demand for the payment of the said amount of money by giving a notice, in writing, to the*

[9]The Banking Public Financial Institutions and Negotiable Instruments laws (Amendment) Act 1988, § 4 has inserted Chapter XVII in the Negotiable Instrument Laws (Amendment) Act, 1988; Discussed in Narayandas Bhagwandas Patani v. Union of India, (1993) 3 BomCR 709.

> *drawer of the cheque within fifteen days of the receipt of the information by him from the bank regarding the return of the cheque unpaid; and (c) The drawer of such cheque should have failed to make the payment of the said amount of money to the payee or the holder in due course of the cheque within fifteen days of the receipt of the said notice.*
>
> *In order to ensure that genuine and honest bank customers are not harassed or put to inconvenience, sufficient safeguards have also been provided in the proposed new chapter*."

These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. However, the Courts were unable to dispose of the cases in a time-bound manner in view of the procedure contained in this act. Therefore, considering the recommendations from various institutions, subsequently, additional provisions in the Act[10] were incorporated with the following objectives:

> "*The proposed amendments in the Act are aimed at early disposal cases relating to dishonor of cheques, enhancing punishment for offenders, introducing electronic image of truncated cheque and a cheque in the electronic form as well as exempting official*."[11]

Further, the Apex Court in the case of *Dalmia Cement (Bharat) Ltd. v. M/S Galaxy Trades & Agencies Ltd. & Ors.*,[12] has reiterated the objective and legislative intent behind incorporation of section 138 of the Act. The Court held that-

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[10]There was further amendment in the Act by The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002.
[11]*Id.* at ¶4-5.
[12]Dalmia Cement (Bharat) Ltd. v. M/S Galaxy Trades & Agencies Ltd. & Ors., (2001) 6 SCC 463.

> "*The Act was enacted and Section 138 thereof incorporated with a specified object of making special provision by incorporating a strict liability so far as the cheque, a negotiable instrument in concerned. The law relating to negotiable instrument is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities, in the present day would, are likely be adversely affected as it is impracticable for the trading community to carry on with it the bulk of currency in force. To achieve the objectives of the Act, the legislature has, in its wisdom thought it proper to make such provisions in the Act for conferring such privileges to the mercantile instruments contemplated under it and special penalties and procedure in case the obligations* under the instruments are not discharged."[13] *The laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities in smooth and healthy manner, ultimately affecting the economy of the country.*"[14]

Thus, it can be safely concluded that the legislative intent for incorporation of Section 138 appears to be to inculcate faith in the

[13] *Id.* at ¶3.
[14] *Id.*

efficacy of banking operations and credibility in transacting business on negotiable Instruments. Additionally, the Hon'ble Supreme Court has also carved out the standard of interpretation that must be adopted, while dealing with cases pertaining to dishonor of cheque under Section 138 of the Act.

V. FAILED JUSTICE

A. Legal Position

In the light of the above provisions, legal precedents and legislative intent behind incorporation of Section 138 of the Negotiable Instrument Act, 1881, the authors humbly submit that the present judgment under consideration suffers from following incongruities and thereby runs contrary to the objects and intention of the Act. The same can be proved in the light of following contentions:

We, further contend that the judgment under construction (Dashrath) suffers from the following incongruities and runs the contrary to the objects and intention of the Act. The analysis of the same is provided below:

a. According to the Dashrath case, complaint under Section 138 of the Act is maintainable only in the court within whose jurisdiction the drawee bank is located. The ratio is based on the premises mentioned hereunder:

The court relying on Ishar Alloy's case logically extended to the question of jurisdiction of the court to take cognizance and held that since "the bank" as mentioned in Clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881 is the drawee bank and thus the "*dishonor of the cheque would get localized at the place where the drawee bank is situated. Presentation of the cheque at any*

place, we have no manner of doubt, cannot confer jurisdiction upon the Court within whose territorial limits such presentation may have taken place."[15]

The court then relying on *Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd*.[16] held that the proviso appended thereto simply certain further conditions, which must be fulfilled for taking cognizance of the offence and would not constitute an offence by itself.[17] The relevant excerpt is as follows:

> "*The proviso is an exception to the general rule is well settled. A proviso is added to an enactment to qualify or to create an exception to what is contained in the enactment. It does not by itself state a general rule. It simply qualifies the generality of the main enactment, a portion which but for the provision would fall within the main enactment*."[18]

b. However, it is our humble submission that the offence under Section 138 is initiated when the drawee bank returns the cheque unpaid as mentioned in the main part of Section 138 of the Act. But, it is noteworthy that the offence gets completed only when the conditions provided in the proviso as appended to Section 138 are fulfilled i.e. upon failure of the drawee to pay the demanded amount within 15 days of the receipt of notice served by the complainant.

c. The contention proposed by us are based on logical and legal interpretation laid down in the following judgments of the Hon'ble Supreme Court and in consonance with the statement of objects and

[15]*Supra* note 1, at ¶3.
[16]Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720.
[17]*Supra* note 1, at ¶5.
[18]*Supra* note 1, at ¶14.

reasons as enumerated by the Bill[19] that has incorporated Chapter XVII of the Act. The contentions are:

Firstly, the Apex Court in Dashrath case has wrongly interpreted the proviso appended to Section 138 by holding that the proviso thereto is simply imposing certain further conditions, which must be fulfilled for taking cognizance of the offence and would not constitute an offence by itself.[20] In this process, the respected judges interpreted the proviso contrary to the Statement of Objects and Reasons appended thereto and the legislative intent of the act that states otherwise.[21] The stated intention of the legislature is provided below for your consideration.

Further, in the case of *Dalmia Cement (Bharat) Ltd. v. M/S Galaxy Trades & Agencies Ltd. & Ors.*,[22] the court held that "*the laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities in smooth and healthy manner, ultimately affecting the economy of the country*."[23]

So, the judges in Dashrath case, in the process of providing convenience to the accused and reducing pendency of cases overlooked the stated intention, objects and reasons of the act and interpreted Section 138 and its proviso in disharmony with the legislature.

[19] *Supra* note 9.
[20] *Supra* note 3.
[21] *Supra* note 9.
[22] *Supra* note 5.
[23] *Supra* note 7.

Secondly, while highlighting the rule of interpretation in case where a statue when construed can lead to two possible constructions, the Apex Court, in case of *Kanai Lal v. Paramnidh*[24] said- "*It must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the legislature*." It is also added that – "When the materials words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction.

In the present case, the proviso under consideration is capable of two constructions on being construed. The one as provided by the Dashrath case and the other as enumerated in the precedents[25]before Dashrath case. Hence, as stated in the judgments above, the permissible interpretation of the statute is to construe the Act in a manner which might be regarded as near to the object, reasons and legislative intent of the Act. However, in this case, the respected judges have construed the Act in a manner that defeats the intention and objects of the Act.

Thirdly, it is also noteworthy that, in the case of *Richardson v. Austin*,[26] the Court held that there is nothing more dangerous and fallacious in interpreting a statute than first of all to assume that the legislature had a particular intention was, and then having made up one's mind what that intention was, to conclude that the intention must be expressed in the statute and then proceed to find it.

In the present case, the Hon'ble Judges in Dashrath case have assumed that the legislature has by virtue of the proviso appended to

[24]Kanai Lal v. Paramnidh, (1957) AIR SC 907.
[25]See K. Bhaskaran v. Sankaran Vaidhyan and Anr., (1999) 7 SCC 510; Prem Chand Vijay Kumar v. Yashpal Singh and Anr., (2005) 4 SCC 417.
[26]Richardson v. Austin, (1911) 12 CLR 463.

section 138 indented to put an additional qualification that needs to be fulfilled for taking cognizance of the offence and concluded that the same has been provided by the proviso appended thereto. Thus, pronounced that the commission of offence takes place only in the main provision while the proviso only states the conditions for prosecution.[27]

Fourthly, as contemplated above, Dashrath case have clearly specified that eh proviso appended to section 138 of the Act, draws an exception to the generality of the enacting part of the provision.[28] However, with due regard to the assumption relied upon by the judges, we fail to appreciate the rationale behind the same. As per Dashrath case, parliament appended the proviso in order to provide safeguards to save the honest drawer to make amends and escape prosecution. However, on a plain reading of objects and reasons appended to the Bill,[29]a different intention is stated thereto which states

> "*In order to ensure that genuine and honest bank customers are not harassed or put to inconvenience, sufficient safeguards have also been provided in the proposed new Chapter. Such safeguards are-*
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> *a. That no court shall take cognizance of such offence except on a complaint, in writing, made by the payee or the holder in due course of the cheque;*
> *b. That such complaint is made within one month of the date on which the cause of action arise; and*

[27]*Supra* note 1, at ¶¶5-9.
[28]*Supra* note 1, at ¶¶ 9,12
[29]*Supra* note 9.

c. *That no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate or a Judicial Magistrate of the first class shall try any such offence*."[30]

Thus, a differentiation is drawn between proviso as safeguards enumerated in the Statement of objects and reasons appended to the bill. While section 142 is enacted to provide necessary safeguards and conditions for taking cognizance by the Court, the proviso is appended to provide for the ingredients of the offence. Thus, it can be safely concluded that Section 142 and not the proviso as appended to Section 138 is determining factor for cognizance of offence and that proviso therein states as to what constitutes as an offence under section 138.

Fifthly, it is worthwhile to mention here that the proviso not only acts as an exception but also as a qualifying aid [31] and in few cases even as a substantive clause. In the case of *Commissioner of Income Tax v. Nandlal Bhandari & Sons.*,[32]it was observed that

"*Though ordinarily a proviso restricts rather than enlarges the meaning of the provision to which it is appended, at times the legislative embodies a substantive provision in a proviso. The question whether a proviso is by way of an exception or a condition to the substantive provision, or whether it is in itself a substantive provision must be determined on the basis of substance of the proviso and not its form*."

In Dashrath case, with an aim to conclude in favor of the erroneous assumption taken up by the Hon'ble judges as mentioned

[30]*Id.*
[31]Kedarnath Jute Manufacturing Co. v. Commercial Tax Officer, Calcutta and Ors., (1966) AIR SC 12.
[32]Commissioner of Income Tax v. Nandlal Bhandari & Sons, (1973) 47 I.T.R.

hereinabove, the respected judges have erred in appreciating the substance of the proviso over from. This ultimately resulted in bypassing the inherent intent and object of appending proviso thereto as laid down in the Bill.

Therefore, the proviso thereto constitutes an ingredient of the offence, and acts as a determining criteria for completion of offence rather than acting as an exception to the generality of the enacting part of the provision.

VI. PRACTICAL CONSEQUENCES

In light of the above legal principles, precedents and judgment, with due respect to the Hon'ble judges, the author humbly submits that the following consequences arise of the judgment which required immediate attention and reconsideration to meet the ends of justice:

a. Firstly, the payee/complainants are put in undue hardship because the ruling in question is taking into account the convenience of one party of the dispute, ("the accused") while the convenience of the other party viz. complainant/payee is totally ignored. This situation arising out of the judgment largely favors people who dishonor cheques written by them. Hence, it is the payee who will have to go to several locations for filing complainants. This will also lead to increase in expenses of the complainant in terms of advocate's fee as the complainant will be forced to engage more advocates and legal personnel's across India for pursuing its case.

As a result, it will eventually cause hardship, harassment and inconvenience to payees, who in good faith accept cheques towards the payment of the goods and services.

b. Secondly, the direction of the Court concerning refilling of a class of complaint to proper jurisdiction, as enumerated in the judgment will in fact, lead to further delay in disposal of cases. The rate of increase of cheque bouncing cases under section 138 can be logically inferred from the statistic presented in the 213th Report of the Law Commission of India.[33] As per the report, more than 38 lakh cheque bouncing cases were pending before various courts as of October 2008. Thus, the direction of re-filing of the Court will in due course will in due course will result in return of lakhs of cases for being filed in the court having jurisdiction over the drawer's bank. This may lead to further procedural red tape and consequential delay.
c. Thirdly, the law relating to negotiable instrument act is the law of commercial world, legislated to facilitate the activities in trade and commerce and aimed to provide sanctity to the instrument s of credit. The same is provided in the statement of objects and reasons as appended to the Bill.[34] However, the ramifications arising out of this judgment, consequently, leads to defeating the objective and intent of the act in the following manner:
    i. The drawer of the cheque will not be serious about enduring that the cheque written by him is honored as the law has become accused friendly without providing much safeguard to the complainant. This will eventually lead to a situation that was prevailing before year 1988, causing dilution of acceptability of cheques in commercial transaction.
    ii. The ruling will also discourage the companies, financial institutions and vendors and other persons

[33]Damodar S.Prabhu v. Syed Babalal H., (2010) 5 SCC 633, p.2, ¶4.
[34]*Supra* note 9.

from accepting a cheque towards the settlement of their dues. Thus, they would demand the payment through alternate means vis. Demand draft, direct bank transfers etc. As a result, the parties availing of services or goods will not be inclined to bear the additional cost of bank charges. These charges will then pass on to the supplier/vendor/service provider, as the case may be.

Accordingly, in the wake of present judgment, the commercial transaction will suffer a huge set back thereby clearly defeating the object of this Act.

d. Fourthly, another important objective of the Negotiable Instrument Act is to promote smooth functioning of the banking activities and financial transactions, ultimately affecting the economy of the Country. However, the judgment has jeopardized the interest of the banking industry thereby affecting the economy of the country. The consequences on the economy can be summed up as following:
    i. Asset quality of banks is one of the most important indicators of financial stability of an institution. Banks work robustly towards classification and provisioning of its assets in order to achieve effective appropriation of recoveries in a uniform and consistent manner.[35] However, in respect of accounts where there are potential threats for recovery due to frauds committed by borrowers, the likelihood of slippage of an asset to a Non-Performing Asset increases manifold. Thus, Reserve Bank of India inter alia has provided for following guidelines to tackle this situation:

[35]Reserve Bank of India, Master Circular: RBI/2014-15/74.

- Banks are strongly encouraged to take recourse to legal remedy when they encounter malfeasance on the part of the borrowers.[36]
- In conformity with the prudential norms, provisions should be made on non-performing assets on the basis of classification guidelines and compute time for turnover of asset.[37]

ii. It is noteworthy that over the last few years, NPA is rising at an alarming rate. Identifying the same, Minister Arun Jaitely recently called banks to step up their credit flow and reduce bad loans.[38] However, after the judgment of Dashrath Case, the banks and financial institutions have faced a serious set-back. The situation arising out of the judgment largely favors people who dishonor cheques written by them. Banks and companies as a practice accept cheques towards payment of the loans extended. Now, In case of dishonor of cheques, it is the payee who will have to go to several locations for filing complaints and recovering his money. This will lead to the following grave consequences:

- Increase in provisioning: Taking into consideration the strict interpretation proposed by the judgement, possible time lag and cumbersome litigation, the Banks and financial institutions will be forced to take stringent measures including increase in

[36]Study on preventing slippage of NPA Accounts, Reserve Bank of India, Ref. DBS.CO.OSMOS/B.C./4/33.04.006/2002-2003, Sept. 12, 2003, p. 4, ¶b.
[37]Reserve Bank of India, Master Circular: RBI/2013-14/18.
[38]BS Reporter, FM asks banks to step up credit flow, reduce bad loans, BUSINESS STANDARD (Nov. 21, 2014), http://www.business.standard.com/article/economy-policy/fm-asks -banks-to-step up-credit-flow-reduce-bad-loans-114112001136.1.html.

provisioning, policies and guidelines in order to recover money from its borrowers. Consequently, it will adversely affect the profitability of the institutions and credit flow to the priority sectors and failure to meet targets.[39]

- Increase in recovery time- Owing to re-filing considerations at a place where the drawee bank is situated, the banks and financial institution will be forced to pursue the same at proper jurisdiction. This in turn will increase the recovery time of the genuine amount due, thereby transforming the assets to non-performing assets and decrease in liquidity.[40]

iii. The Foreign Direct Investment and Business by SMEs & Entrepreneurs will also suffer due to cumbersome litigation procedure and potential threat of dilution of acceptability of cheques. It can be depicted as following:

- Finance Minister, Arun Jaitely highlighted that India has tremendous opportunity to attract foreign investment and that a large number of international entrepreneurs are working towards expansion of their business in India.[41]
- As regards to Indian entrepreneurs and SMEs, the share of Micro, small and Medium Enterprise (MSME) contribution to GDP will significantly increase from the current 8% to 15% by 2020 and the contribution to India's GDP stands around 8% for the year 2011-12. Identifying the important role played by the entrepreneurs and SMEs in

[39]Credit Market, Reserve Bank of India, p. 126.
[40]*Supra* note 36, at 6.
[41]*Supra* note 38.

propelling the Indian economy, it is of utmost importance to maintain the credit flow from banks and financial set ups to such units.[42]

- However, the judgment in hand has potential to create impediments towards the same due to cumbersome litigation. Foreign entrepreneurs who may exchange their goods and services be readily accepted mode of negotiable instrument i.e. Cheques are likely to face severe consequences in case of dishonor of cheque by a fraudulent client. Hence, an entrepreneur, already at a nascent stage of its business, will be over-burdened with additional expenses to recover its legitimate sum. As a result, there is a likelihood of facing a set-back in terms of FDI by foreign entrepreneurs due to lack of effective options for pursuing a case under section 138 of the Act and biased approach towards accused.

Hence, the cumulative effect of the above issues will lead to creating impediments and restraining the banks form funding new investments that our economy rightly needs.[43] Therefore, in the light of the above considerations, there is an immediate need to balance the possibilities in a better way in order to facilitate the intent and objective of the act and prevent adverse impact on our economy.

[42]Saurabh Gupta, *Share of MSME in GDP may reach 15% by 2020: Study by KPMG*, (Oct. 28, 2014), http://www.smetimes/news/top-stories/2014/Oct/28/share-of-msme-in-gdp-may-reach-15-pc-by-2020-study631653.html.
[43]Talk by Dr. Raghuram G. Raja at the 3rd R. Varghese Kurien Memorial Lecture at IRMA, Anand on Nov. 25, 2004.

VII. UN-ADDRESSED ISSUES/CONTENTIONS

The Hon'ble Judges failed to take note of the following aspects while pronouncing the judgment that provides a greater thrust to reconsider the judgment with utmost priority:

A. Jurisprudential Aspect

This Act is a special law and the provisions therein have been inserted to regulate the growing business, trade, commerce and industrial activities of the country. Further, it aims to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India.[44] However, in present case, the Judges have only taken into perspective the hardship and inconvenience suffered by the accused thereby acting against the essence of criminal jurisprudence.

It is noteworthy that this Act and the provisions herein are incorporated with one of the objectives being to prevent dishonesty on part of the drawer of Negotiable Instrument Act. Additionally, if need arises, the Statute should be interpreted in light of the object and intent of the act and a balanced approach should be adopted by the Court while interpreting the judgment.[45] Thus, any judgment that runs contrary to the established rule of interpretation must be reconsidered by the legislative Bodies and Supreme Court as it leads to grave injustice.

[44]*Supra* note 33.
[45]Krishna Janardhan Bhatt v. Dattatraya G. Hegde, (2008) 4 Mh.L.J. 354.

B. At Par Cheques & E-Cheques

Another aspect that was not taken into consideration while pronouncing this judgment pertains to at-par cheques and e-transaction that form the bulk of commercial transactions these days.

In Dashrath Case, the Court observed that[46]-

> "*…in our discernment, it is also now manifest that traders and businessmen have become reckless and incautious in extending credit where they would heretofore have been extremely hesitant, solely because of the availability of redress by way of criminal proceedings. It is always open to the creditor to insist that the cheques in question payable at the creditor's convenience*."

Therefore, it is clear that by issuing of cheques payable at all branches, the drawer of the cheque had given an option to the banker of the payee to get the cheques cleared from the nearest available branch of bank of the drawer. Thus, there is ambiguity with respect to the fate of "at par cheques" in the recent light of application of this judgment.

Similarly, bulks of commercial transactions are happening by electronic media by virtue of e-cheques. However, the Judges have also failed to deal with the issue of territorial jurisdiction in case of dishonour of e-cheques which is an issue of deep concern.

[46] *Supra* note 1, at ¶4.

VIII. CONCLUSION & SUGGESTIONS

In the light of the above issues and contentions, it can be concluded that there are serious repercussions that arise from this judgment. It not only leads to affecting the economy of the country by casting following consequences including setback in commercial and financial transactions, acceptability of cheques, cumbersome litigation, hardship to complainant etc. but has also caused grave injustice. The Hon'ble judges have pronounced the judgment in light of an erroneous assumption and are in direct contravention to the stated intention of the legislature as enumerated in the Statement of Objects and Reasons of the Bill. Further, it has also failed to address some of the very crucial issues affecting the commercial transaction in the country including the issue of territorial jurisdiction pertaining to dishonour of "at par cheques" and "e-cheques."

Thus, the situation demands immediate attention in order to safeguard the interest of the public at large and maintain the sanctity of cheques in commercial transaction. Secondly, the judiciary and legislature should take note of the sensitivity of the issue and ambiguity that has arisen due to Dashrath case and address the same as the earliest. Thirdly, the law ministry should hold discussions with trade and commerce bodies in order to elicit broad spectrum of suggested measures and incorporate necessary changes, keeping in mind object and intention of the Act and the rights of both the parties i.e. (complainant and the accused). Fourthly, section 138 of the Act should be reconsidered in light of its object of enactment and legislature should lay guidelines, providing power to courts to try the offence at places where the cause of action has substantially arisen and not merely incidentally, in addition to where the drawee bank is situated.