IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4203-2022 (O&M)
Date on which reserved: 28.09.2022
Date of Pronouncement: 17th October, 2022

G.S.M. Technologies Pvt. Ltd. ....Petitioner

Versus

Dr. Veena Anand .... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Tushar Sharma, Advocate
for the petitioner.

Mr. Narendra Hooda, Sr. Advocate with
Mr. Dharam Bir Bhargav and
Mr. Kulwinder Bhargav, Advocates
for the respondent.

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MANJARI NEHRU KAUL, J.

The petitioner is impugning the order dated 16.09.2022 (Annexure P-36) passed by the Civil Judge (Junior Division), Gurugram vide which the following directions were issued:-

i) The respondent was restrained from further permanently alienating the suit property by way of sale etc.;

ii) the respondent was allowed to collect arrears of rent (for the period after which she became owner of the property as per court order), and to collect future rents from the existing tenants. She was further granted permission to lease out the remaining two vacant floors of the suit property;

iii) the respondent was granted permission only to the limited effect that she could clear the outstanding dues of Haryana State Industrial and Infrastructure Development Corporation (hereinafter referred to as "HSIIDC") after getting her name incorporated in its records as per its policy and rules subject to the condition that she would inform HSIIDC that incorporation of her name in its record was to be subject to the final outcome of the litigation and still further there was a stay on alienation of the suit property by the trial court. The respondent was further directed to file an affidavit before the trial court in above said regard;

iv) the petitioner was directed to deposit Rs.17.30 crore received by it from the respondent, in the shape of a FDR with the court. On being done, the respondent was also directed to deposit the rental amount received from the tenants of the suit property as arrears or future rent, in the shape of FDR and both the parties were directed to place the original FDRs on record; FDRs were directed not to be released to either of the parties till further directions of the court.; and

v) The respondent/plaintiff was allowed to pay and clear all the electricity dues qua the suit property.

Learned counsel appearing for the petitioner while inviting the attention of this court to the above directions passed in the interim order

(Annexure P-36) submits that it suffers from patent illegality and thus deserves to be set aside being a result of arbitrary exercise of judicial discretion.

Learned counsel further vehemently submits that firstly the trial court had no jurisdiction to pass the judgment and decree dated 22.12.2021 (Annexure P-18) (hereinafter referred to as 'compromise decree') as the exclusive jurisdiction to adjudicate upon the subject matter in dispute between the parties lay only with the commercial court because the amount involved therein was much beyond Rs.50 lakhs, i.e. the amount specified in the Haryana Government Notification dated 17.01.2020 (Annexure P-31) and moreover, the suit property was commercial in nature and was admittedly being used as such. Still further, learned counsel submits that the jurisdiction could neither be usurped by any court nor could it be conferred even with the consent of the parties, once the jurisdiction itself was not vested in the court concerned, by any statute. He thus, urges that since the compromise decree itself was without jurisdiction, it being null and void could not have been enforced in any manner whatsoever and no interim order too could have been passed by the trial court, in furtherance of the same. However, the trial court while passing the impugned order had fallen into error by ignoring the settled position of law and thus acted beyond its jurisdiction.

Learned counsel contends that even otherwise while passing the impugned order, the trial court erred in not even recording its satisfaction to the effect as to how and when the respondent had become owner of the suit property or even got its possession. He further contends that the trial court failed to appreciate that till date the ownership of the suit property continued to vest with the petitioner and had not yet been transferred to the respondent as no sale deed had been executed by the petitioner in pursuance to the compromise decree. Hence, the respondent was not entitled to get herself recorded as the owner of the suit property in HSIIDC records and she was further not entitled to either collect the rent from the existing tenants or even to lease out the remaining two vacant floors of the suit property, more so when the possession of the suit property was still with the petitioner. Learned counsel submits that the trial court had virtually assumed the jurisdiction of an executing court and erroneously issued directions in the nature amounting to the execution of the alleged compromise decree (Annexure P-18). Learned counsel vehemently contends that the trial court in exercise of its powers under Section 151 CPC could not have directed execution of a decree and the jurisdiction, if any, qua the execution of a decree, was within the exclusive domain of the executing court only.

Learned counsel still further submits that the compromise decree had been obtained fraudulently, and since it is a settled principle of law that fraud vitiates every proceeding, therefore, the compromise decree being an outcome of fraud could not be enforced and executed by any court of law, being void ab initio. He, thus, submits that the impugned directions passed by the trial court were repugnant to the above settled principles of law and had caused grave prejudice to the petitioner.

Learned counsel still further, while drawing the attention of this court to the impugned directions submits that they being in the nature of mandatory injunction, could not have been issued at this stage, as interim mandatory injunction cannot be ordinarily granted unless some compelling circumstances warrant any such interference by a court of law.

Learned counsel for the petitioner also submits that the respondent in her application under Section 151 CPC (annexed as Annexure P-33), for issuance of appropriate clarifications by the Court in compliance with the specific directions issued by the Hon'ble Supreme Court vide its order dated 12.07.2022 in Civil Appeal No. 4695/2022, had nowhere made a prayer to direct the petitioner to deposit Rs.17 crore 30 lakhs in a FDR, however the trial court strangely on its own went beyond the pleadings and prayer of the parties by directing the petitioner to deposit the above said amount in a FDR.

Learned counsel in support has placed reliance upon the following judgments:-

> 1) Kishore Kumar Khaitan and another v. Praveen Kumar Singh (2006) 3 SCC 312;
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> 2) Samir Narain Bhojwani v. Aurora Properties and Investments and another (2018) 17 SCC 203;
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> 3) Hyderabad Engineering Industries v. State of Andhra Pradesh (2011) 4 SCC 705;
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> 4) Abbas Husain Sarang and another v. Ismail Gafoor Sarang 1991 SCC OnLine Bom 472; and
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> 5) Ram Chand and Sons Sugar Mills Private Ltd., Barabanki v. Kanhayalal Bhargava and others (1966) 3 SCR 856.

Per contra learned senior counsel appearing for the respondent has vehemently opposed the submissions made by the counsel opposite and contends that the impugned order does not warrant any interference as the trial court did not exceed its jurisdiction and had rather acted in consonance with the directions issued by the Hon'ble Supreme Court in its order dated 12.07.2022 passed in Civil Appeal No. 4695/2022.

Learned senior counsel while inviting the attention of this court to the compromise decree, which is presently under challenge before the trial court, submits that the respondent was declared owner of the suit property by the trial court vide the said decree and further the parties were held entitled to get the revenue records corrected in accordance with the provisions of the Indian Registration Act, on payment of the requisite stamp duty. Thereafter, in compliance of the said compromise decree, the respondent after paying the requisite stamp duty of Rs.1,07,70,000/- vide Certificate No. G0F2022A2371 dated 06.01.2022 had got the said Compromise Decree registered in the office of the Sub-Registrar, Kadipur, Gurugram, as Document No. 9646 on 10.01.2022. Subsequently, a rectification deed dated 14.01.2022 too was registered to rectify a mistake in Document No. 9646 dated 10.01.2022. Learned senior counsel appearing for the respondent submits that once as per the Compromise decree, the respondent had been declared owner and still further it had been registered as per the provisions of law, the ownership of the suit property had validly passed on to the respondent. Thus, there arose no question of execution of the Compromise decree as was being portrayed by the counsel opposite since the same stood already executed and the title of the suit property transferred in favour of the respondent.

Learned senior counsel further submits that the HSIIDC vide its letter ref. No. H.S.I.D.C. No.420 dated 27.04.2022 had raised a demand of Rs.5.03 crore towards enhanced cost wherein it was categorically intimated by it that in the event of non payment of the said amount the plot in question shall be resumed. Apart from this amount of Rs.5.03 crores, there were also outstanding dues in the sum of Rs.0.31 crore qua the suit property payable to the HSIIDC. He, thus, submits that in the light of the fact that unless and until respondent was recorded as owner of the suit property in the HSIIDC records, it would not not have been possible for her to clear the outstanding dues, the trial court rightly granted her permission to the extent of clearing the dues after getting her name incorporated in the records of HSIIDC as per its rules and policy. Learned senior counsel further submits that a perusal of the impugned order leaves no manner of doubt that the trial court had adopted a very balanced approach to prevent any prejudice to either of the parties as the respondent had been granted the above said permission subject to the condition that HSIIDC would be duly intimated by the respondent that the incorporation of her name in its records was to be subject to the final outcome of the litigation in question, and also that there was a stay of the trial court operating on further alienation of the suit property.

Learned senior counsel furthermore submits that the respondent was in fact caught in a predicament since she admittedly had paid a sum of Rs.21.52 crores to the petitioner which was more than the agreed sale consideration of Rs.20 crores as per Agreement to Sell dated 20.04.2018. In addition thereto, she had also undertaken to clear an amount of Rs.5.34 crores to HSIIDC, and despite all this, she was still not being able to enjoy the benefits of the suit property, due to the ongoing litigation between the parties.

Learned senior counsel submits that Raman Kapur, Director of the petitioner company is a fugitive, currently in hiding in Romania. He had not only defrauded the respondent but also defaulted in repaying his debts to various banks as a result of which a Lookout Circular stood issued against him. He submits that since the petitioner is in a state of insolvency, he was conscious of the fact that he would be unable to deposit the amount of Rs.17.3 crores in a FDR, hence, it was evident that he was looking for an escape route. He further submits that the application for recalling of the compromise decree as well as the filing of the instant petition is nothing but a tool to harass the respondent and prevent her from enjoying the benefits of the suit property and also to further dupe her of the amount already paid by her to the petitioner. Learned senior counsel submits that it is very strange and fails to appeal to any logic as to how the petitioner has been prejudiced by the impugned order. Even though the petitioner has admittedly received Rs.1.52 crores over and above the agreed sale consideration and has also been discharged from the liability of paying dues in the sum of Rs.5.34 crores to HSIIDC, however, still it wants to take possession of the suit property, collect rent from the existing tenants and to further let out the remaining two vacant floors of the suit property.

Learned senior counsel vehemently contends that it is very easy to allege fraud however difficult to prove the same, hence, whether the compromise decree in question has been obtained by fraud or not can only be ascertained after the parties lead their respective evidence. He has asserted that at this stage the impugned order has been rightly passed in the background of a valid and enforceable decree operating in favour of the respondent. Learned senior counsel, therefore, contends that unless and until the compromise decree is set aside, the respondent can not be deprived of her rights over the suit property.

Lastly, learned senior counsel also asserts that the trial court was perfectly justified in passing the impugned order so as to balance the scales of equity in order to protect the interests of both the parties and also to preserve the suit property. Learned senior counsel while controverting the submissions made by the counsel opposite qua the trial court's jurisdiction over the subject matter in question submits that the case was still at the initial stage and it would always be open to the petitioner to raise these pleas during the course of the trial.

However, while rebutting the submissions of the learned senior counsel for the respondent, learned counsel for the petitioner has drawn the attention of this court to the terms and conditions of the compromise deed dated 22.07.2021, on the basis of which the compromise decree was passed. He submits that a perusal of the terms and conditions stipulated therein make it evident that the respondent was merely held entitled to get a sale deed executed in her favour, however, nowhere was it suggested in the compromise deed that the parties ever intended that the ownership of the suit property was to pass on to the respondent by way of the compromise decree. He submits that even otherwise, if the petitioner ever wanted to transfer the ownership of the suit property it would have been smoother to directly execute and register a sale deed in favour of the respondent instead of entering into a compromise for getting the compromise decree passed. Therefore, he submits that all these circumstances when seen and appreciated in their entirety leave no manner of doubt that it was just a ploy on the part of the respondent to get a stamp of approval on her fraudulent deeds by a court of law.

Learned counsel for the petitioner also submits that the suit in question was filed for specific performance of Agreement to Sell dated 20.04.2018 and not for declaration qua ownership, therefore, the trial court while passing the compromise decree could not have declared the respondent as owner of the suit property. Thus, it was incumbent upon the respondent to get a sale deed executed in her favour before she could stake her claim as owner of the suit property. He further submits that the respondent is intentionally avoiding the execution of the compromise decree as she was conscious of the fact that it had been passed by a court having no jurisdiction.

Learned counsel for the petitioner further submits that the petitioner is in the process of challenging the notice issued by HSIIDC demanding the payment of enhanced cost etc. before the appropriate authorities, therefore there was no immediate threat of resumption of the suit property as was being wrongly portrayed by the respondent. He still further submits that the *mala fides* on the part of the respondent could be discerned from the fact that though the transaction in question took place in Gurugram, the respondent got a criminal complaint registered against Raman Kapur before the Delhi police and still further she in collusion with the police officials, had got issued a Lookout Circular against him as a result of which he was unable to travel to India. Learned counsel, on instructions, still further submits that the petitioner is still ready and willing to repay the amount of Rs.17.30 crores along with the agreed rate of interest i.e. 8% per annum, till date, to the respondent, within the next six months, in case she was ready to let go of the suit property.

On the other hand, while controverting the submissions of the counsel opposite, learned senior counsel for the respondent contends that it is always open for a court to mould the relief in the given facts and circumstances of a case and hence the trial court cannot be faulted with, for passing the compromise decree vide which the respondent has been declared as owner of the suit property. He submits that it is not open for the petitioner to challenge the compromise decree on this ground since it was passed in the presence of its duly authorized representative and no objection to the said effect was ever taken by him at that time.

Learned senior counsel also submits that since the compromise decree already stood executed, having been registered on 10.01.2022 the question of initiating execution proceedings as urged by the learned counsel for the petitioner did not arise. Learned senior counsel, on instructions, has rejected the offer of the petitioner to repay the amount of Rs.17.30 crores along with 8% interest and submits that the respondent wants to retain the ownership and possession of the suit property.

Heard and perused the relevant material on record.

While disposing of Civil Appeal No. 4695 of 2022 the Hon'ble Supreme Court vide order dated 12.07.2022 passed the following directions:-

> **"The interim order, if any, of the Appellate Court would continue and it is for the Trial Court to take final view as to what is the nature of interim order, which should or should not operate uninfluenced by any interim order which may be subsisting."**

Pursuant to the above directions, the trial court passed the order dated 16.09.2022 which is under challenge before this court.

Before proceeding further, it would be relevant to deal with, and discuss as to whether the ownership of the suit property was transferred to the plaintiff, pursuant to the compromise decree or not.

For facilitation of reference, the relevant portion of the compromise decree dated 22.12.2021 is reproduced hereunder:-

> "It is ordered that the suit of the plaintiff is decreed as per compromise Ex.C1. Compromise Ex.C1 be made part and parcel of the decree and it is made clear that parties shall remain bound by their statement. Plaintiff is represented through her husband Dr.R.K.Anand, being her GPA holder (as per Ex.P3) and defendant company is represented through Mr. Ravi Kumar, being its authorized representative (as per Ex.D2). However, decree shall not have any effect on the interest of any third party/legal heir of either, who is not made a party to the settlement. **As a consequential effect, parties shall be entitled to get the concerned revenue records corrected in accordance with this decree subject to the payment of stamp/registration duty and as per provision of the Indian Registration Act.**"

A bare perusal of the above reproduced extract of the compromise decree makes it abundantly clear that the relief so granted by the trial court was declaratory in nature as the parties were authorized to get the revenue records corrected with respect to the suit property, in accordance with the provisions of the Indian Registration Act, on payment of the requisite stamp duty. Had it been otherwise, the trial court would have simply directed the parties to execute and register a sale deed as per the terms and conditions of the compromise. Still further, since the compromise decree had created new rights and title in the suit property, which was valued beyond Rs.100/-, it was required to be registered in accordance with the provisions of the Indian Registration Act as has been laid down by the Hon'ble Supreme Court in ***Bhoop Singh v. Ram Singh Major & Others*** (1995) 5 SCC 709. It is a matter of record that pursuant to the compromise decree, the respondent got the same registered in the office of the Sub Registrar Kadipur, Gurugram, vide Document No. 9646 dated 10.01.2022, after payment of stamp duty amounting to Rs.1,07,70,000/- vide Certificate No. G0F2022A2371 dated 06.01.2022. Hence, there can be no manner of doubt that the ownership of suit property stood transferred in favour of the respondent and still further a perusal of the compromise deed (Annexure P-12) reveals that even the possession of the suit property as well as the original title deeds stood transferred to the respondent. Therefore, in these circumstances there was indeed no occasion for the respondent to get the compromise decree executed by initiating execution proceedings.

This court also finds no merit in the submissions made by the learned counsel for the petitioner that since the suit in question was for specific performance of the Agreement to Sell dated 20.04.2018 and not for declaration of ownership, hence the trial court could not have passed a declaratory decree. It would be apposite to refer to Order 7 Rule 7 CPC which empowers the court to grant any such relief which it may think just even though it may not have been specifically prayed or pleaded for, in the plaint. The trial court while passing the compromise decree has consciously moulded the relief and passed a declaratory decree in view of the subsequent compromise between the parties so as to avoid any further litigation and loss of time.

The submissions made by the learned counsel for the petitioner that the trial court by way of the impugned order has virtually ordered the execution of the compromise decree deserves to be rejected outrightly. Rather, the trial court has just confined itself to the issuance of a clarification qua the mode and manner in which the suit property including the income derived therefrom was to be dealt with by the respondent during the pendency of the litigation in question. Still further, the trial court has not erred while permitting the respondent to clear the outstanding dues to HSIIDC qua the suit property so as to save it from being resumed. Not only this, in order to protect the interests of the petitioner, the trial court has directed incorporation of the name of the respondent in the HSIIDC records with a proviso that it would be subject to the final outcome of the litigation.

Coming to the next submissions of the learned counsel for the petitioner that the compromise decree being a result of fraud was a nullity and thus should not be enforced, in the opinion of this court is also devoid of any merit. This court does not find any force in the aforementioned submissions of the learned counsel for the petitioner as it is a well settled principle of law that unless and until a decree is set aside it operates as a valid one and would be binding upon the parties. The Hon'ble Supreme Court in ***Pushpa Devi Bhagat (D) Th. LR Smt. Sadhna Rai*** *v.* ***Rajinder Singh & others*** (2006) 5 SCC 566 has held as under:-

> " XXXXXX
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> 12. The position that emerges from the amended provisions of Order 23, can be summed up thus :
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> > (i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96 (3) CPC.
> >
> > (ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.
> >
> > (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.
> >
> > **(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court**

> **which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.**
>
> XXXXXX"

and in ***K.Srinivasappa and others*** *v.* ***M.Mallamma & others 2022 AIR (SC) 2381*** has held as under:-

> " XXXXXX
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> 35. It is a settled position of law that where an allegation of fraud is made against a party to an agreement, the said allegation would have to be proved strictly, in order to avoid the agreement on the ground that fraud was practiced on a party in order to induce such party to enter into the agreement. Similarly, the terms of a compromise decree, cannot be avoided, unless the allegation of fraud has been proved. In the absence of any conclusive proof as to fraud on the part of the objectors, the High Court could not have set aside the compromise decree in the instant case.
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> XXXXXX"

In the instant case, the petitioner has a long way to travel from alleging fraud to actually proving it by leading cogent evidence. Merely alleging that the compromise decree was fraudulently obtained would not by itself be a sufficient ground to ignore the decree at this stage, more so when its operation has not been stayed by any court of law. It would be pertinent to point out that if a decree is challenged on grounds of it having been fraudulently obtained, the same would not by itself operate as a stay unless and until there is a specific order to that effect by a court of law.

The objections raised by the learned counsel for the petitioner that since the trial court had no jurisdiction to pass the compromise decree, no interim directions in furtherance of the same could have been passed by the trial court, cannot be sustained and also deserve to be rejected. At the cost of repetition, it may be pointed out that the trial court had been empowered by the Hon'ble Supreme Court in Civil Appeal No. 4695 of 2022 to take a final view qua the nature of the interim order, passed by the Appellate Court. Hence, the trial court cannot be said to have exceeded its jurisdiction while passing the impugned order. Even otherwise, since the petitioner has now approached the trial court for recalling of the compromise decree dated 22.07.2021, the trial court would have the jurisdiction to pass appropriate interim orders to serve the ends of justice, until the matter in issue is finally decided.

In the facts and circumstances of the instant case, this court has no hesitation in holding that the trial court was fully justified in passing the impugned order at this stage so as to prevent any prejudice to either of the parties and also to preserve the suit property. Further more, the trial court cannot be faulted with for directing the petitioner to deposit Rs.17.30 crores in FDR during the pendency of the application under Section 151 CPC filed by it, even though it was beyond the prayer and pleadings of the parties. There cannot be any embargo on a court to pass an appropriate order beyond the prayer of the parties, in case the interest of justice so demands. In the instant case, assuming that the petitioner succeeds in proving his allegations of fraud and the compromise decree is accordingly set aside, then in that case the respondent would lose on both counts i.e. the suit property would devolve upon the petitioner and even the amount of Rs.17.30 crores admittedly paid by her would remain with the petitioner. In such an eventuality, the respondent would again have to initiate recovery proceedings or seek recourse to any other remedy as may be available to her, which without a doubt would lead to multiplicity of litigation as well as wastage of precious judicial time. Therefore, in the above background the trial court has rightly secured the interests of the respondent so that in the aforesaid eventuality she is not left in a lurch. Needless to add, in case the petitioner fails to substantiate his allegations of fraud, the amount so deposited in the FDR would be released to it. Hence, in the opinion of this court, the trial court has taken a very balanced approach to ensure that the outcome of the litigation in question does not turn out to be a '*false dawn of justice*' for either of the parties.

The case laws relied upon by the learned counsel for the petitioner would not come to his rescue in the peculiar facts and circumstances of the instant case, more so, when a compromise decree is operating in favour of the respondent.

In ***Kishore Kumar Khaitan's case (supra)*** the Hon'ble Supreme Court held that interim mandatory injunction cannot be granted unless the plaintiff has established that he was dispossessed subsequent to filing of the suit, in violation of the status quo order.However, in the instant case, the respondent has been able to establish her ownership as well as possession of the suit property, thus, the interim order cannot be said to be suffering from any illegality.

In ***Samir Narain Bhojwani's case (supra)*** the Hon'ble Supreme Court held that interim mandatory injunction can be granted only in exceptional circumstances. It was further held that power to mould relief cannot be exercised at interlocutory stage. However, the facts of the case in hand, are distinguishable as in the instant case there is no question of moulding of relief by trial court at the interlocutory stage.

Hyderabad Engineering Industries's case (supra) would also not help the cause of the petitioner since the compromise decree had declared the respondent as owner and subsequently the said decree was registered as per the provisions of the Registration Act.

In ***Ram Chand and Sons Sugar Mills' case (supra)*** the Hon'ble Supreme Court had examined the scope and extent of Section 151 CPC. In the present case, the trial court cannot be said to have acted beyond the scope of Section 151 CPC as it was specifically empowered by the Hon'ble Supreme Court to take a call on the nature and extent of the interim order to be passed.

As a sequel to the above discussion, this court is not inclined to interfere with the impugned order dated 16.09.2022 passed by the Civil Judge (Jr. Divn.), Gurugram (Annexure P-36). Accordingly, the petition being devoid of any merit is dismissed.

Nothing contained herein above shall be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

17.10.2022
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Note: Whether speaking/reasoned Yes / No
Whether Reportable: Yes / No