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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-2098-2021 (O&M)
Date of decision: 01.10.2024

Raj Kumari

...Petitioner

Versus

Deepak Jain and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ajay Jain, Advocate for the petitioner

Mr. Amar Vivek Aggarwal, Advocate and
Ms. Sanchi Bindra, Advocate and
Mr. Sujeet Kumar Chaudhary, Advocate
for the respondents.

VIKAS BAHL, J. (ORAL)

1. Present civil revision i.e., CR-2098-2021 has been filed by the tenant-Raj Kumari challenging the order dated 28.03.2017 passed in Rent Petition No.537/2013 by the Rent Controller, Rewari vide which ejectment petition filed under Section 13 of the Haryana Urban Control of Rent and Eviction Act, 1973 filed by respondents i.e., Deepak Jain and Sachin Jain against the present petitioner with respect to shop No.21 situated at Jain Market, Arya Samaj Road, Sarai Balbhadar, Rewari has been allowed and the petitioner was directed to vacate the same within a period of two months from the date of the order. Challenge has also been made to the judgment dated 25.11.2019 passed in RA No.8 of 2017 vide which the Appellate



Authority had dismissed the appeal filed by the petitioner against the judgment dated 28.03.2017.

2. Brief facts of the present case are that the respondents had filed 3 eviction petitions with respect to 3 shops i.e. shop No.20, 21 and 22 on the pleading that the said 3 shops were most suitable for the wholesale and retail business of shoes to be carried out by respondent No.1-Deepak Jain. It would be relevant to note that as far as shop No.20 is concerned, the eviction order had been passed on 31.03.2016 against the tenant and in the appellate proceedings, compromise was effected and thus, no further challenge has been laid by the tenant in the said case. As has been stated hereinabove, the present revision petition along with accompanying revision petition has been filed with respect to Shop No.21 and 22. In paragraph 3 (B) of the eviction petition dated 03.01.2011 (Annexure P-1), the respondents have made detailed averments with respect to the requirement of the shops in question on account of bonafide necessity of respondent No.1-Deepak Jain. It was averred that the said respondent Deepak Jain was in need of the shop No.21 as he wanted to open a showroom in the said shop and in other two shops which were adjoining the shop in question i.e. shop Nos.20 and 22 and all the 3 shops were required for running the business of wholesale and retail of shoes and that the said 3 shops were the most suitable for the said wholesale and retail business.

3. It was fairly stated in the eviction petition that respondent Nos.1 and 2 were the owner of shop No.1 to 22 and the said shops were under tenancy of various persons and it was the said 3 shops i.e. Shop No.20, 21 and 22 which as per them were most suitable. It was further pleaded that the



respondents were not in occupation of any other shop/commercial building in city Rewari nor have they taken any shop on rent or any commercial building after the year 1949 nor have they been evicted from the same. It was further pleaded that the residence of the respondents were separate from their father Padam Chand Jain and that respondent No.1-Deepak Jain was working in the firm M/s Pyare Lal Manohar Lal which was the sole proprietorship of his father Padam Chand Jain and was drawing a salary of Rs.12,000/- per month and even the said firm was running the business of shoes and thus, while working in the said firm, respondent No.1 had got experience of shoe business. The second ground for eviction which has been raised was arrears of rent. In the said eviction petition, it was also pleaded that the property in question had been purchased by the respondents vide two sale deeds dated 13.07.2007 and 27.07.2007 and thus, by operation of law, the petitioner had become their tenants.

4. Two separate replies were filed to the said eviction petitions. In the reply dated 02.04.2011 (Annexure P-2) filed by the petitioner-Raj Kumari, particularly in paragraph 7 of the preliminary objections of the same, it was stated that the disputed shop was a part of the big building which fact was clear from the site plan of the petitioner. It was pleaded that the need of the respondents herein was not bonafide and thus, the respondents herein were not entitled to evict the tenants. It was further denied that Padam Chand Jain was the sole proprietor of the firm M/s Pyare Lal Manohar Lal.

5. The Rent Controller vide two separate judgments of the even date i.e., 28.03.2017 allowed both the petitions under Section 13 filed by the



respondents and ordered the eviction of the petitioner(s) from shop Nos.21 and 22 on the ground of personal necessity. A perusal of the judgment dated 28.03.2017 passed in the case of the petitioner-Raj Kumari would show that the Rent Controller had taken into consideration all the relevant aspects under issue No.1 which was with respect to bonafide requirement. It was observed that it had been proved on record that the firm M/s Pyare Lal Manohar Lal Jain was the sole proprietorship of Padam Chand Jain and with respect to the same, the evidence of PW-17 Naveen Kumar, Tax Assistant alongwith the documents produced by him i.e. Ex.PW17/1 to Ex.PW17/3 and also separate tax returns of respondent No.1-Deepak Jain Ex.PW17/4 to Ex.PW17/7 were taken into consideration. Even the documents produced by PW-18 Gangadhar, Labour Inspector, who had produced the registration record of the firm M/s Pyare Lal Manohar Lal as ExPW18/1 to Ex.PW18/4 were also taken into consideration before coming to the said conclusion that the firm M/s Pyare Lal Manohar Lal Jain was the sole proprietorship of Padam Chand Jain. In paragraph 14 of the judgment, it was also observed that the respondents had been able to prove their separate status from their father and in the said regard, the evidence of PW-10 Satyabir Singh, Sub Inspector, Food and Supply, who had proved ration card as Ex. PW10/1 to Ex.PW10/5 and had further stated that respondent-Deepak Jain was having a separate ration card from his father and brother Sachin and other relevant evidence in this regard was also taken into consideration.

6. On the aspect of personal necessity, it was observed that PW-19 Deepak Jain had himself stepped into the witness box and had supported the averments made in the application and similarly PW-16 Padam Chand Jain



had also supported the case of the respondents and had further stated that the respondent-Deepak Jain was working in the shop as a labourer and was getting Rs.12,000/- as salary per month and that shop Nos.20, 21 and 22 were the most suitable for the business of shoes and also the fact that the respondents had no other premises other than the premises in question. The fact that the wife of respondent No.1-Deepak Jain remains ill and her kidney transplant had taken place was also noticed. The evidence of the petitioner-tenant was also duly taken into consideration before passing the said eviction order.

7. The appeals filed by the petitioner(s) herein were also dismissed by the Appellate Authority. A perusal of the judgment dated 25.11.2019 passed in the case of present petitioner- Raj Kumari in RA-8-2017 would show that every argument raised on behalf of the petitioner herein was duly considered and was rejected after perusing the record. The argument to the effect that the firm M/s Pyare Lal Manohar Lal was a joint Hindu Family business and thus, the respondent-Deepak Jain was a beneficiary thereunder was duly considered and rejected after taking into consideration the documents on record including the documents Ex.PW9/1, Ex.PW9/2, Ex.PW8/1, Ex.AW7/1 to Ex.AW7/3, Ex.PW-18/1 to Ex.PW-18/4 which show that the said firm was in the sole proprietorship of Padam Chand Jain. Reference has also been made to the cross-examination of RW-5-Om Parkash in which he had stated that Padam Chand Jain was the sole proprietor of the said firm. Even the admission of the other witness of the tenant (petitioner herein) to the said effect was also noticed and a finding of fact was returned that respondent No.1-Deepak Jain was not a member of the



firm M/s Pyare Lal Manohar Lal and the said firm was in the sole proprietorship of Padam Chand Jain.

8. The argument raised on behalf of the petitioner to the effect that shop No.1, 4, 10, 17 and 20 had become vacant after filing of the petition, was also taken into consideration and it was observed that shop Nos.20, 21 and 22 were situated on the main road and were more suitable for their business than the other shops which were not as ideally located as the shop Nos.20, 21 and 22. It was further observed that it was the specific pleading of the respondents that the said 3 shops were most suitable for carrying out the business of shoes in wholesale and retail. Various judgments of the Hon'ble Supreme Court as well as of this Court which specifically laid down that it is the prerogative of the landlord to get evicted the shop as per his requirement and it is not open to the tenant to suggest what shops to be got vacated and that the Rent Controller was not to proceed on the assumption that the requirement of the landlord is not *bona fide*, were taken into consideration. Even the law on the aspect that neither the tenant nor the Courts can sit over the judgment of the landlord for his/her needs, was also taken into consideration. The location of every shop was taken into consideration and after considering the same, it was observed that where the demised shops were on the main chowk, the other shops were opening up into a narrow street and after considering all aspects, a finding of fact was returned to the effect that the demised shops were more suitable than the other shops which had become available after filing of the ejectment applications and that need of the landlord/respondent was *bona fide* and genuine. It was observed that it is the landlord who is the best judge of his



requirement and thus, the appeal was accordingly dismissed.

9. Learned counsel for the petitioner has challenged the abovesaid judgments on two points. The first point raised by learned counsel for the petitioner is that it was the case of the tenant that the firm M/s Pyare Lal Manohar Lal was a family firm and was not in the sole proprietorship of Padam Chand Jain and was a joint Hindu Family business and the respondents being sons of Padam Chand Jain had a birth right in the said business and thus, the plea raised by one of the respondents in the eviction petition to the effect that he was in employment of the said firm and was receiving a sum of Rs.12,000/- as salary per month from the said firm was incorrect. In support of his arguments, learned counsel for the petitioner has referred to the plaint which has been exhibited as ExPW8/1 in Civil Suit between Padam Chand Jain and his brother on one side, against their father Mangat Ram and has made specific reference to paragraphs 2 and 3 of the said plaint to highlight the fact that the said persons were carrying out the joint business and it was only in 1987, that there was an oral family settlement and as per the said family settlement, Padam Chand Jain was given the firm M/s Pyare Lal Manohar Lal, one house and one shop. It is submitted that from the said pleadings, it is apparent that the property was a Joint Hindu Family property and the respondents being sons had a birth right in the same.

10. The second argument raised by learned counsel for the petitioner is to the effect that after filing of the eviction petition, as many as 7 shops have fallen vacant to the respondents and thus, the respondents can carry on their business in the said 7 shops. In support of his argument,



learned counsel for the petitioner has referred to the site plan Ex. RW10/1 which has been annexed as Annexure P-3 alongwith Civil Revision No.2098 of 2021 and has highlighted that shop Nos. 1, 3, 4, 10, 11 and 17 in addition to shop No. 20 have fallen vacant. It is submitted that since the need of the respondents is with respect to the three demised shops, the same can be fulfilled from the said shops which have become vacant after the filing of the present eviction petitions. It is argued that in view of the said subsequent events, the two eviction petitions filed by the respondents deserve to be rejected and the impugned order deserves to be set aside.

11. Learned counsel for the respondent-landlord on the other hand, has opposed both the revision petitions and has submitted that the judgments of the Rent Controller and the Appellate Authority are well reasoned and detailed and the revision petitions being meritless deserve to be dismissed. It is submitted that both the Courts have given a finding of fact with respect to the *bona fide* requirement of the respondents and it is not for this Court to disturb the said finding of fact. It is argued that the findings are even in accordance with law and deserve to be upheld. With respect to the argument made on behalf of the petitioner on the aspect of the firm i.e., M/s Pyare Lal Manohar Lal not being a sole proprietorship, it is stated that sufficient number of documents have been produced by the respondents before the Rent Controller as well as the Appellate Authority which would show that the same is a sole proprietorship. It is submitted that documents showing the income tax returns, record lying with the Labour Inspector have also been duly exhibited and even the witnesses of the tenant including RW-5 have, in the cross-examination admitted the fact that the firm is in the sole



proprietorship of Padam Chand Jain. It is further stated that even the fact that the respondents are residing separately from their father has also been proved beyond doubt and in the said regard, the evidence of PW10 Satyabir Singh, Sub Inspector Food and Supply, who has produced and proved the relevant documents including the ration card has been highlighted. It is stated that even a careful perusal of the plaint of the suit (Ex.PW8/1) (in the case of Raj Kumari), which has been highlighted by learned counsel for the petitioner would show that even in the year 1987, it had been stated that the firm had come into the share of Padam Chand Jain. It is further submitted that the said suit culminated into the passing of the judgment and decree dated 31.03.1987 whereby the firm M/s Pyare Lal Mohan Lal fell into the share of Padam Chand Jain.

12. It is further submitted that the plea with respect to seven shops being available after the filing of the eviction petition does not in any way further the case of the petitioner. It is submitted that apart from the specific pleadings in the eviction petition to the effect that it is shops No.20, 21 and 22 which are more suitable, it has been highlighted that even as per Ex.RW10/1 {site plan produced by the present petitioner(s)}, other shops are not even remotely suitable, inasmuch as, shop Nos.22, 21 and 20 open up to the main road, whereas, other shops do not open onto the said main road. It is further stated that shop No.1 is a very small shop which is measuring 5'x5', whereas, shop No.22 has dimension of 55'x9'. It is stated that even shop Nos.4, 10 and 17 are also small shops as compared to shop No.22 and the said shops are not opening onto the main road and shop No.17 is not connected with the other shops, which as per the petitioner had fallen vacant.



It is argued that the premises which have been shown in Ex.RW10/1, produced by the petitioner-tenant, as shop No.3 and 11, are in fact not shops but are passages. It is further argued that even if the said premises are taken to be shops, then also, shops No.20, 21 and 22 would be more suitable for carrying out the business of the respondents.

13. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that judgment of the Rent Controller dated 28.03.2017 and that of the Appellate Authority dated 25.11.2019 are detailed and in accordance with law and deserve to be upheld and both the present revision petitions being meritless, deserve to be dismissed.

14. Both the Courts had concurrently found that the need as projected by the respondents in para 3(B) of the eviction petition was genuine and bona fide and the said finding had been returned after taking into consideration the documents and evidence on record. There is no perversity or illegality in the said findings. The argument raised on behalf of the petitioner to the effect that the firm i.e. M/s Pyare Lal Manohar Lal was not a sole proprietorship and that respondents had a birth right in the same and thus, the plea raised in the eviction petition to the effect that respondent-Deepak Jain was working in the said firm and was earning Rs.12,000/- per month was false, is completely misconceived. A perusal of the record and the judgments of both the trial Court as well as the First Appellate Court would show that the entire record was taken into consideration to come to a conclusion that the said firm was in the sole proprietorship of Padam Chand Jain. The said evidence and documents included evidence of PW17 Naveen



Kumar, Tax Assistant who proved the fact that returns of the proprietary firm of M/s Pyare Lal Manohar Lal have been filed by Padam Chand Jain. A perusal of Ex.PW17/2 would show that in the Income Tax Returns for the Assessment Year 2009-10, it had specifically been stated that Padam Chand Jain son of Mangat Ram was the proprietor of M/s Pyare Lal Manohar Lal Jain and the said return has been duly signed by Padam Chand Jain.

15. Even, the separate tax documents of Deepak Jain-respondent No.1 have also been taken into consideration by the Courts to come to a conclusion that M/s Pyare Lal Manohar Lal Jain is a sole proprietorship and the said Deepak Jain was only working as an employer thereunder. Ex.PW17/7 which is the return for the assessment year 2010-11 with respect to Deepak Jain would show that under the heading of “income from salary”, it has specifically been stated that salary to the extent of Rs.1,17,000/- has been received from M/s Pyare Lal Manohar Lal Jain. Even in Ex.PW17/5, which is also the return of Deepak Jain for the assessment year 2009-10 under the heading of “income from salary”, it has been stated that the salary received by Deepak Jain from M/s Pyare Lal Manohar Lal Jain is Rs.1,09,000/-. Further PW18-Gangadhar Labour Inspector had been examined, who had produced on record the registration record of the firm-M/s Pyare Lal Manohar Lal Jain as Ex.PW18/1 to Ex.PW18/4. A perusal of Ex.PW18/2 which is the Form ‘F’ filled up under the Punjab Shops and Commercial Establishment Act, 1958 would show that the name of establishment has been stated as M/s Pyare Lal Manohar Lal Jain and the type of establishment has been stated as sole proprietorship and the name of the employer who could be either MD Director or proprietor is stated to be



Padam Chand Jain. As has been noticed by the First Appellate Court in para 12, even RW5-Om Parkash, who had been examined as witness of the tenant-Raj Kumari, had also admitted in his cross-examination that Padam Chand Jain is the sole proprietor of M/s Pyare Lal Manohar Lal Jain and thus, finding of both the Courts to the effect that the firm is in the sole proprietorship of Padam Chand Jain cannot be stated to be perverse or illegal and thus, calls for no interference. Even the plaint on which reliance has been placed upon by learned counsel for the petitioner i.e. Ex.PW8/1, would also show that in para 3, it had been stated that there had been an oral family settlement and the said firm had come to the share of Padam Chand Jain. Moreover, the fact that respondent-Deepak Jain was drawing a salary from the said firm was further proved from the Income Tax Returns which have been referred to hereinabove and thus, it cannot be stated that the plea raised in the eviction petition on the said aspect is false and incorrect.

16. The second argument raised by learned counsel for the petitioner to the effect that certain shops had fallen vacant after filing of the eviction petition and the said shops could be used by respondent-landlord to meet his requirements and the impugned order deserves to be set aside on the said aspect, also deserves to be rejected. In this regard, it would be relevant to refer to para 3(B) of the eviction petition filed by the respondent-landlord in which it has been specifically stated that shop Nos.20, 21 and 22 were most suitable for carrying out the wholesale and retail business of shoes which respondent No.1-Deepak Jain wanted to carry out. Para 3(B) of the eviction petition dated 03.01.2011 filed in the case of petitioner-Raj Kumari is reproduced hereinbelow:-



*“B. That the plaintiff Deepak is in need of shop in dispute. Plaintiff Deepak is working in the firm Pyare Lal Manohar Lal Rewari, this firm is running the business of shoes wherein the father of the plaintiff Paramchand Jain is the sole Proprietor. Plaintiff Deepak is getting sum of Rs. 12000/- only as salary per month which is insufficient for the plaintiff Deepak and his family. **Plaintiff Deepak now wants to open a Showroom in the Shop in dispute and other adjoining shops which have been shown in the map as shop Number 20 and 22 in all three shops and to run business of wholesale and retails of shoes. Plaintiff Deepak is also having experience of shoes business. Applications for eviction in respect of above mentioned shop No. 20 and 22 against the occupant tenants have also been filed separately and all these three shops No. 20, 21 and 22 is most suitable for wholesale and retail business.** The ownership of the plaintiff is from shop Number 1 to 19, in which the plaintiffs are the tenants prior to the purchase as has been shown in the map. On the upper portion of shop Number 1 to 22 there is residential property in which seller of the plaintiff Umrao Singh and their family were residing. Now the plaintiffs have let out upper portion to Indo-Tibetan Border Police for the residence of their employees on rent. Tenants of Shop Number 20, 21 and 22 are also continuous tenants prior to the purchase of the plaintiffs. The plaintiffs are not in occupation of any other shop of commercial building in City Rewari nor the plaintiff have taken on rent any shop or any commercial building after the year 1949 nor have get it evicted, nor even has evicted. The residence of the plaintiff, meals, income is separate from their father Paramchand Jain.”*

17. A perusal of the above would show that complete details of the ownership of the respondents of all the shops have been given and specific averments have been made which are in consonance with law. It has



specifically been averred that shop Nos.20, 21 and 22 are most suitable for wholesale and retail business of shoes. The First Appellate Court had after considering the entire law and record had observed that shop Nos.20, 21, and 22 were situated on the main road and were more suitable for business of the respondents whereas shop Nos.1, 4, 10 and 17 did not fall in the said category and it was observed that as per the site plan, the shops which have become vacant after filing of the application for ejectment were opening into a narrow street and were not opening on the main road as were the demised shops. It was also observed that availability of an alternate shop on the backside of the demised shops, opening into a narrow street could not be considered to be suitable for business purposes when the demised shops were on the main chowk and were much more suitable to carry on business. The findings of the First Appellate Court on the said aspect are reproduced hereinbelow:-

*“Another argument was raised that the various other shops were got vacated and that shops no. are 1, 4, 10, 17 and 20 as per document Ex.RX/2, Ex.RX/3 to Ex.RX/5, Ex.RW11/3. Regarding this the crucial date for deciding the bonafide requirement of landlord is the date of his application for eviction has to be seen as per law laid down in D. Sasi Kumar Vs. Soundararajan 2019 SAR 1088 (SC) and Hukum Chandra (D) Thr. LRs. Vs. Nemi Chand Jain & Ors. arising out of Civil Appeal No.3827 of 2014 decided on 14.12.2018 by Hon’ble Supreme Court of India. The necessity has to be seen on the date of filing of the eviction application and not after that. **Moreover rest of the shops are small and cannot be evicted on the grounds mentioned in the petition. It is the ground in the petition that shops no.20, 21 and 22 are situated on the main***



road and are more suitable for their business whereas shops no.1, 4, 10 and 17 do not fall on any category as per site plan. So it is the just choice of the landlord and its suitability. It is just prerogative of the landlord to get vacated shop as per his requirement. Petitioners wanted to open a showroom of shoes on front side. This is the requirement of the landlord to open shop on front side which would be more commercial than opening the shop in narrow street which cannot be considered suitable for business purpose.

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14. It is the bonafide need of the owner of the shop as per law laid down in M/s. Satpal Vijay Kumar Vs. Sushil Kumar 2011(2) RCR 82 where it has been further held that when the eviction is sought on the ground of bonafide need, the Rent Controller shall not proceed on the assumption that requirement is not bonafide. If landlord states that he needs the demised shop for establishment of new business or to extend the business, his need should always be presumed as correct and genuine. Availability of alternate suitable shops with him on the back side of the demised shops being used as godown, opening in a narrow street, cannot be considered suitable for business purpose, when the demised shops are on the main chowk and certainly more suitable to carry on any business. The need of the landlord must be presumed as bonafide, genuine and correct. Rent Controller shall not proceed to presume that alleged need is not bonafide. Further as per law laid down in Ram Chameli and others Vs. Mittar Pal 2006(2) Law Herald 1679 working as an employee with his father, desire of the landlord to set up an independent business in another shop cannot be said to be lacking any bonafide.

Even as per law laid down in Manohar Lal Sanghi Vs. Jaswant Rai Ahuja 2007(4) PLR 153 the tenant cannot suggest that the first floor would be suitable for the purpose of business



of the landlord. Even if the first floor is available the tenant cannot judge need of the landlord and assert that the landlord must establish his business on the first floor of the building. In Pawan Kumar Vs. Ramji Dass Arora 2018(5) Law Herald 4014 it has been held that neither the tenant nor Rent Controller can sit over judgment of landlord for his/her need. In Niranjana Lal Mittal Vs. Daya Kishan 2006(2) HRR 271 tenant's eviction sought on ground of bonafide requirement.....”

18. A perusal of the site plan Ex.RW10/1, which has been produced by the petitioner-tenant and has been annexed as Annexure P-3 would also fully fortify the abovesaid findings. Shop No.22 is 55 feet x 9 feet whereas shop No.1 is 5 feet x 5 feet, shop No.4 is 6 feet x 9 feet, shop No.10 is 10 feet x 10 feet, shop No.17 is 10 feet x 10 feet, shop No.11 is shown to be 9 feet x 10 feet and shop No.3 is shown to be 9 feet x 9 feet and thus, shop No.22 is far bigger than the other shops. Additionally, shop Nos.22, 21 and 20 open onto the main road and are contiguous to each other and thus, the same would be most suitable. On the other hand, shop No.1 is of very small size i.e. 5 feet x 5 feet whereas shop No.17 is not contiguous to the other shops i.e. shop Nos.10, 4, 3 and 11 and also opens up into a narrow street and does not open up into the main road. Even shop Nos.10, 4, 3, 11 open into a narrow street and do not open into the main road. Thus, even in case, the site plan produced by the tenant is taken into consideration, then also it is apparent that the plea taken by the respondents-landlord to the effect that shop Nos.20, 21, and 22 are more suitable, is genuine and bona fide and cannot even remotely be doubted. It has been rightly observed in the impugned judgments that Courts are not to proceed on the assumption that



the requirement of the landlord is not bona fide and that a landlord is the best judge of his requirement and that neither the tenant nor Courts can sit over the judgment of the landlord for his/her need and thus, the judgments of the Rent Controller as well as Appellate Authority are in accordance with law and deserve to be upheld. The revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

19. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

01.10.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No