



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc(Pet.) No. 7477/2024

1. Gordhan Lal Soni S/o Ramniwas Soni, Aged About 60 Years, R/o ChotiKhatu, Barla Bazar, Dist. Nagaur, Raj.
2. Shobha Devi W/o Gordhan Lal Soni, Aged About 53 Years, R/o ChotiKhatu, Barla Bazar, Dist. Nagaur, Raj.
3. Lalita Soni D/o Gordhan Lal Soni, Aged About 32 Years, R/o ChotiKhatu, Barla Bazar, Dist. Nagaur, Raj.

-----Petitioners

Versus

State Of Rajasthan, Through Pp

KamlaDevi W/o ShyamSundarSoni, Aged About 72 Years, R/o Behind K.g. Complex And Durga Mata Temple, Rani Bazar, Police Station Kotegate, Bikaner, Raj.

-----Respondents



For Petitioner(s) : Mr. Chetan Prakash Soni.
Smt. Sarita Soni.

For Respondent(s) : Mr. Vikram Singh Rajpurohit, PP.

HON'BLE MR. JUSTICE ARUN MONGA

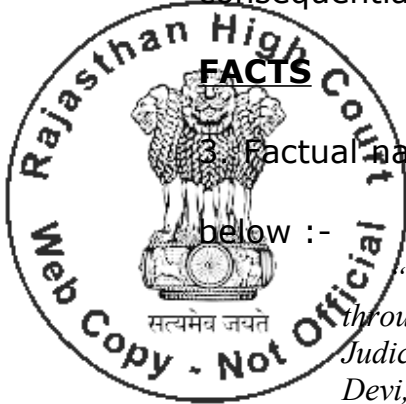
Judgement

¹24/10/2024

1. The case in hand illustrates the fallacious practice often followed by the Judicial Magistrates in directing police officials to register FIRs, invoking their power under section 175 of the BNSS [corresponding with section 156 of the Cr.P.C.], in a mechanical manner and without due application of judicial mind, even if the ingredients of the alleged offences are not made out. Such perfunctory approach, in turn, puts the civil liberties of the accused persons at risk, forcing them to seek bail as suspects—either anticipatory, alternatively, regular—if they have been arrested following the registration of the FIR and, if charge sheet already filed, then as an undertrial, face the harassment, humility and agony of trial in Courts.

¹ Uploaded after corrections on 11.12.2024

2. Petitioners No. 1, 2 and 3 are son-in-law, daughter and granddaughter (being the daughter of petitioners No. 1 and 2), respectively of the complainant/respondent No.2. They seek quashing of FIR No. 266 dated 27.09.2024, PS Kotegate, Bikaner registered against them for alleged offences under Sections 420/406/120B IPC and consequential proceedings.



3. Factual narrative as per translated version of the impugned FIR is as below :-

"Today, on 27.09.2024, following complaint was received through post under Section 175 (3) (BNSS) from the learned Chief Judicial Magistrate, Bikaner, filed by complainant Smt. Kamla Devi, wife of late Shyam Sunder caste Soni, age 72 years, resident of K.G. Complex, behind Durga Mata Temple, Police Station Kotegate, Bikaner, under Sections 420, 406, 120B of the IPC.

x-x-x-x-x-x-x-x

*In the court of Chief Judicial Magistrate,
Bikaner.*

Kamla Devi, wife of late Shyam Sunder caste Soni, age 72 years, resident of K.G. Complex, behind Durga Mata Temple, Bikaner.

Complainant

versus

- 1. Gordhan Lal Soni, son of RamniwasSoni, resident of ChhotiKhatu, Barla Bazaar, District Nagaur.*
- 2. Shobha Devi, wife of Gordhan Lal Soni, resident of ChhotiKhatu, Barla Bazaar, District Nagaur.*
- 3. Lalita Soni daughter of Gordhan Lal Soni resident of ChhotiKhatu, Badla Bazar, District Nagaur.*

Accused

*Complaint under section 175 (3) BNSS
Section 61, 316 (2), 318 (4) BNS.*

Sir,

The complaint is being presented as below :-

- 1. I, the complainant, Kamla Devi wife of late Shyamsundar caste Soni, age 70 years, resident behind K.G. Complex, behind Durga Mata Temple, Bikaner, am a widow. I have two sons and four daughters.*
- 2. One of my sons Bhavani died in an accident and my daughter Shobha was married to Gordhan Lal Soni of ChhotiKhatu who is my eldest son-in-law and the family had placed trust in Shobha and her husband.*

3. In the past the accused persons had defrauded me, which caused a family rift. After my husband's demise, they sought forgiveness, seemingly to regain my trust. However, there was a big conspiracy behind their settlement i.e. their intention to usurp my property and my wealth (money, gold, silver). Same gradually became apparent to me and I got to know the real faces of these two.

4. That after the death of my husband and son Bhavani, I was left alone. Therefore, my daughter Shobha and her husband Gordhan Lal Soni used to come to meet me. After the death of my husband and son, I was under deep shock due to which I was unable to think much.

5. That my son-in-law Gordhan Lal Soni came to Bikaner on 21.01.2021 and called me and said that he wanted to buy a camera and I should bring 1 lakh rupees to him at KEM Road. I, the complainant, reached KEM Road with one lakh rupees and made the payment for the camera for Gordhan ji. Gordhan ji then gave the camera to his son Lalit and sent him to Khatu.

6. On 21.05.2021, Gordhan ji again came to my house and asked for two lakh rupees from me for his personal need. I again gave two lakh rupees to Gordhan ji. He stayed at my house that night and left with two lakh rupees in the morning on 22.05.2021.

7. That on 21.09.2021 my daughter Shobha and son-in-law Gordhan Lal Soni along with their 5-year-old grand son came to my house, then stayed here on 22.09.2021. On 23.09.2021 Gordhan ji and Shobha demanded two lakh rupees for their personal needs, thus they took two lakh rupees, 100 grams of gold and 2 kg 700 grams of silver from me and went away.

8. That on 26.10.2021 Gordhan ji telephoned me and asked me to come to Khatu. He said asked me to bring along the bank passbook and cheque book. On the instructions of my son-in-law Gordhan ji, I went to Khatu and when I reached Khatu, Gordhan ji induced me to sign a cheque and withdrew Rs. 1,50,000 from the bank. Entire amount was taken by my son-in-law Gordhan Lal Soni. On 28.03.2022, my daughter Shobha and Gordhan Lal ji again came to my house along with her son-in-law and daughter Pooja. They stayed overnight and when they were leaving in the morning on 29.03.2022, they demanded two lakh rupees. I then gave two lakh rupees to my son-in-law Gordhan ji. Before leaving, he also took my gold thread, gold locket-2, gold ring-1, 1 pair of earrings and a pair of silver anklets, silver tagdi, 2 silver rings and a pair of bichhiya which was a total of 500 grams of silver.

9. In this manner, my son-in-law Gordhan Lal Soni took Rs. 8,50,000/- (eight lakh forty five thousand rupees) and 100 grams of gold, 2 kg 700 grams of silver, gold and silver ornaments from me by deceit and fraud. **When I asked for the money and gold and silver ornaments that I had lent, he refused** and now abuses with foul language. My daughter Shobha is also involved in this conspiracy with her husband. My grand son, who is the son of Gordhan ji Soni, is also an equal partner in this conspiracy.

10. I, the complainant submitted a complaint regarding the above incident in the police station Kotegate Bikaner and also presented the complaint to the Superintendent of Police, Bikaner on.. (date not clear), but till date no case has been registered.

11. That the complainant comes under the jurisdiction of concerned S.P.. Complaint herein within the limitation and court fee has been affixed. Therefore, by presenting the complaint along with affidavit under section 175 (3) Cr.P.C., it is prayed that an order be passed to take legal action by registering a case against the accused persons under Section 61, 316 (2), 318 (4) BNS.

I will be highly grateful.



(Complainant)

Kamla Devi wife of late Shyamsundar caste Soni
resident K.G. Behind Complex,
Behind Durga Mata Temple, Bikaner.

(emphasis supplied)

x-x-x-x-x-x-x

On receipt of the FIR, a case is registered under the above mentioned crime Sections 420, 406, 120B of the Indian Penal Code and the investigation is handed over to Mr. Praveen Kumar, Head Constable 138. The FIR number and time shall be given by CCTNS but it shall be mentioned separately below. One copy of the FIR issued as per rules shall be given free of cost to the complainant.

Sd/

Gourav Bohra

Sub Inspector”



4. FIR was thus registered. Post registration thereof, it is the prosecution machinery of the State responsible for investigation and other necessary action in the case. The role of the complainant is thereafter limited to assisting the prosecuting State machinery. The State/prosecution herein is duly represented by the learned Public Prosecutor. As such, notice to the complainant seems unnecessary and the same is dispensed with.

SUBMISSIONS

5. I have heard learned counsel for the petitioners as well as learned Public Prosecutor and have perused the case file.

6. Learned counsel for the petitioners argues that the allegations levelled by the complainant in the FIR are false and fabricated. The complainant is attempting to mislead the investigating agency by concocting a baseless story without any credible evidence. The FIR appears to be a clear attempt to harass the petitioners and damage their reputation.

6.1. Referring to the recitals in the petition, to the effect that the amounts of money, gold and silver mentioned in the FIR allegedly given on loan, it was argued that the same were actually given under an agreement dated 04.09.2020 for the transfer of property (Plot No.

123 at Vishal Nagar, Merta City, Nagaur). The complainant herself breached this agreement by selling the property to a third party, Mr. Vijendra Kumar, for a higher price. She is now falsely claiming fraud to cover up her own breach of contract.

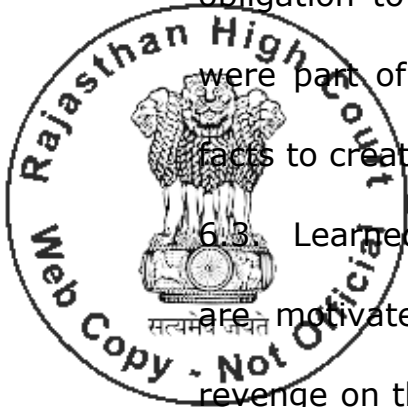
6.2. Learned counsel also asserted that the petitioners had no legal obligation to return any money to the complainant, as the said sums were part of a property transaction. The complainant has twisted the facts to create the false impression that the petitioners owe her money.

6.3. Learned counsel further points out that the complainant's actions are motivated by vested interests and a malicious intent to take revenge on the petitioners after the property transaction did not fructify in her favor. The complainant is using the criminal justice system to settle personal scores.

6.4. Moreover, there is also an unexplained delay in lodging the FIR, he contended. The complainant though claims the events occurred over a period starting in 2021, but the FIR was lodged only on 27.09.2024. This delay raises serious doubts about the veracity of the allegations. Same is clearly suggestive that the FIR was filed as an afterthought to harass the petitioners.

6.5. Be that as it may, the dispute is purely civil and essentially a family matter involving property issues. The allegations of fraud, breach of trust, and conspiracy are all baseless, counsel for the petitioners argued.

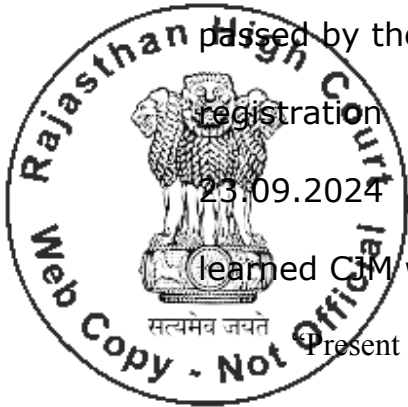
7. Learned Public Prosecutor argued that no indulgence of this Court is warranted at this stage. Investigation is underway. If no culpability of any crime is found, a negative final report shall be filed in accordance with law. Conversely, if there is sufficient material unearthed, showing



commission of crime, a charge sheet will be filed and law will take its own course. Thus, he seeks dismissal of the petition.

DISCUSSION AND ANALYSIS OF APPLICABLE LEGAL PROVISIONS

8. First and foremost, it would also be apposite to look into the very genesis of the FIR. Let us, therefore, see the order dated 23.09.2024 passed by the learned CJM on the complaint presented to him seeking registration of FIR. A translated copy of the said order dated 23.09.2024 (not under challenge in these proceedings) passed by learned CJM was tendered in course of hearing which reads thus :-



Present : Complainant Kamala Devi
along with advocate Shri Rustam.

Inquiry report regarding the case was presented by the Police Officer, Police Station Kotgate, Bikaner. The complainant and her advocate were heard. The report was perused. Perusal of the report reveals that on an enquiry by Police on the application submitted by the complainant, the fact of fraud committed by the non-applicants with the complainant has come to light. Therefore, the complaint submitted by the complainant is sent to the Police Officer, Police Station Kotgate, Bikaner under Section 175(3) BNSS and it is ordered that the First Information Report in the case be registered and the result be reported to the court, as soon as possible, after carrying out the investigation. The file be listed on 21.10.24 awaiting the outcome thereof.

Sd/-
Chief Judicial Magistrate"

After passing the above order, the complaint filed under section 175 of BNSS was then sent by post to the SHO of the police station for registering an FIR. The SHO, in turn converted the complaint itself as FIR, in verbatim.

9. Adverting now to the merits of the FIR, before I proceed to render my opinion in detail by recording reasons thereof, at the outset, I may express that I am unable to persuade myself with the stand taken by the learned PP. A perusal of the contents of the FIR quoted above clearly reflects that none of the offences alleged by the complainant

have been made out. Yet, the learned Magistrate directed the registration of the FIR.

10. Qua the order of the CJM, directing the registration of FIR, no doubt, his approach reveals adherence to the procedure as envisaged under section 175, ibid. However, the order doesn't elaborate on any analysis or discussion of the material presented before him. Neither

does his order record any satisfaction as to how the examination of the police report withstands the judicial rigor.

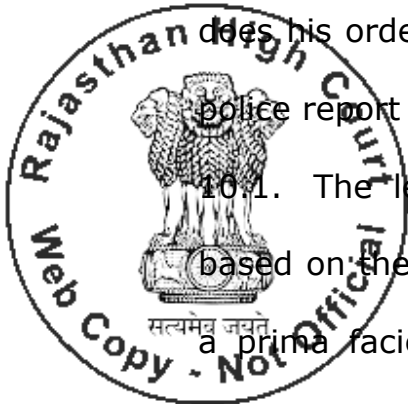
10.1. The learned CJM simply directs the police to register an FIR based on the inquiry report without independently determining whether a prima facie case exists. Merely accepting the police's findings and criminalising a family dispute is a complete judicial oversight.

10.2. The order does not reflect whether the CJM applied judicial mind to assess the gravity of the alleged fraud as per the allegation levelled by complainant/mother against her daughter, grand-daughter and the son-in-law. It is thus nothing but a rubber-stamp decision-making. Section 175(3) BNSS has been invoked with no reasoning given for its application. The decision for registration of FIR is heavily reliant on the police's initial findings. A proactive approach by asking for supporting documentation would have ensured procedural fairness/any miscarriage of justice and judicial independence rather than point blank acceptance of police version.

11. In the aforesaid context, let us see Section 175 of BNSS so as to understand the real intent and purport thereof. Same is reproduced here in below:-

“Police officer’s power to investigate cognizable case.

175. (1) Any officer in charge of a police station may, without the order of a jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:

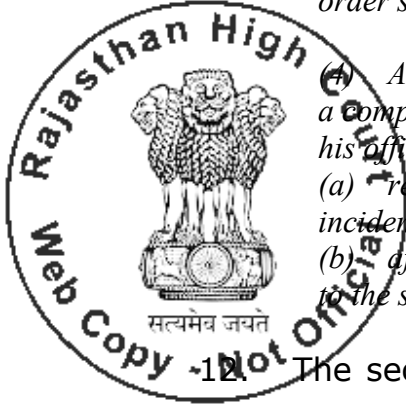


Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

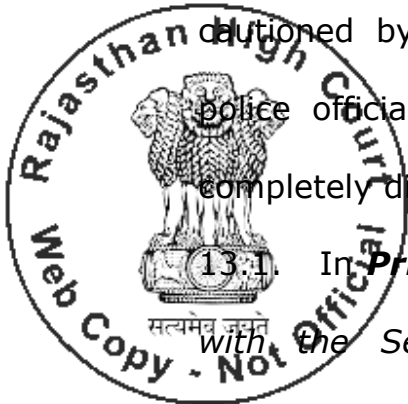
(4) Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to-
(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and
(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged."



The section *ibid*, [corresponding with 156 of Cr.P.C.] outlines the statutory requirements to exercise the powers by magistrates in the investigation of cognizable cases. This provision empowers the officer in charge of a police station to initiate investigations into cognizable offenses without prior authorization. Intent thereof is where alleged crime is of the nature which warrants arrest of the accused without a warrant (e.g. murder, theft, or rape). Thus ordinarily such powers are to be exercised in cases where the nature and gravity of the offense demand that such sensitive or complex cases receive due attention from a senior officer, failing which, the jurisdictional magistrate. Inherent checks and balances contained therein are to ensure that any crime against society does not go unpunished.

12.1. At the same time, power under the section *ibid* ought not to be misused to carry out investigations in frivolous complaints. The magistrate may also conduct his own inquiry before arriving at a just decision, to prevent misuse of police powers. The provisions thus aim to ensure effective and fair investigation of cognizable offenses while balancing the need for judicial vigilance.

13. Reference at this stage may also be had to Supreme Court judgment rendered in **Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors.**². Catena of precedents rendered by Supreme Court have been referred, relied and discussed in Priyanka Srivastava judgment. A perusal of the judgment, *ibid*, makes it amply clear that the Judicial Magistrates in the country have been chapter and verse cautioned by the Supreme Court against mechanically directing the police officials to register FIRs. Yet, the aforesaid dictum has been completely disregarded in the present case.



13.1. In **Priyanka Srivastava** (*supra*), the Apex Court, while dealing with the Section 156(3) Cr.P.C, (corresponding to the relevant provisions of Section 175(3) of the BNSS, 2023) held, *inter alia*, as under:

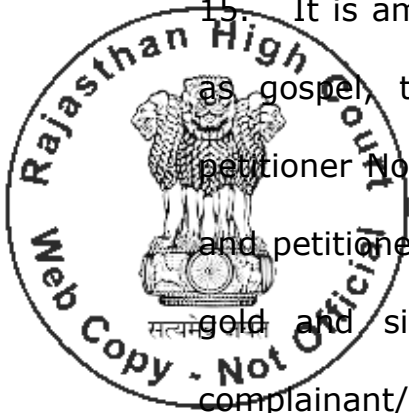
“29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where [Section 156\(3\)](#) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under [Article 226](#) of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.”

14. Reverting to the case in hand, in the light of aforesaid, the direction issued by the CJM to register FIR appears to suffer from the vice of proper application of judicial mind. The FIR reproduced above reveals that the complainant's own assertion therein, *inter alia*, is that

²(2015) 6 SCC 2874

*"my son-in-law Gordhan Lal Soni has taken away from me Rs. 8,50,000, eight lakh forty five thousand rupees and 100 grams of gold, 2 kg 700 grams of silver, gold and silver ornaments by deceit and fraud. When I asked for **the money and gold and silver ornaments that I had lent**, he refused and abuses me and uses foul language. My daughter Shobha is also involved in this conspiracy with her husband. My grand son, who is the son of Gordhan ji Soni, is also an equal partner in this conspiracy."*



15. It is amply clear that even if the allegations, as above, are taken as gospel, then too, the same show a case of simple refusal of petitioner No. 1 (son in law) in league with petitioner No. 2 (daughter) and petitioner No. 3 (grand daughter) to repay the money and return gold and silver ornaments that had been allegedly lent by the complainant/mother in law or mother or grandmother, as the case may

be. Refusal to repay the money and return the gold and silver ornaments that had been allegedly lent by the complainant, to my mind, do not constitute the criminal offences ascribed to the petitioners.

15.1. On the other hand, the allegations only show that the dispute between the complainant and the petitioners is purely civil in nature, which has been given the colour of criminality in the complaint forming the basis of the FIR. Yet, the learned Chief Judicial Magistrate, without referring to any facts showing the ingredients of the offence, observed that the complainant had been cheated and on that premise passed an order directing the police under Section 175(3) of BNSS, to register an FIR in the case. Obviously, in my opinion, the order directing the police to register an FIR was passed in a cursory and mechanical manner showing total lack of application of judicial mind to the overall contents of the complaint, facts and circumstances of the case.

16. I am thus of the mind that keeping in view of the legal position vis-à-vis facts of the instant case, as brought out above, the

registration of the impugned FIR against the petitioners herein is an abuse of process of law.

RELIEF

17. As result of the above discussion and without going into the aforesaid other contentions raised by the learned counsel for the petitioners, the petition is allowed and the impugned FIR No. 266 dated 27.09.2024, PS Kotegate, Bikaner registered for offences under Sections 420/406/120B IPC and consequential proceedings against the petitioners are quashed.

CONCLUSION

18. Before parting, in the light of position of law as outlined in the preceding part, it would be prudent to observe and emphasize that in cases of familial disputes, where one relative accuses another of criminal conduct triable by a Magistrate, it is advisable that utmost caution must be exercised by both law enforcement and the Magistrates, before directing registration of FIRs. In such sensitive matters, it is imperative to act with circumspection, prioritizing efforts to mend familial relationships rather than exacerbating discord.

18.1. In disputes involving allegations of a non-violent nature and magisterial trials, particularly when close/blood relatives are involved, magistrates should be mindful that the customary requirement of a sworn affidavit is often treated as a mere formality, relying on generic templates. As demonstrated in the present case, where the deponent simply affirms awareness of the complaint's contents, magistrates must, to the extent possible, personally verify the authenticity of the allegations. This could be achieved through verbal inquiries or other means, ensuring the complainant understands and substantiates the claims made in the complaint, thus deterring false or frivolous accusations.

18.2. Magistrates must also meticulously ascertain the truthfulness and credibility of the allegations, corroborating them with supporting material before taking action. Criminal Complaints in family disputes should not be entertained casually or without due scrutiny, as this may lead to undue harassment. Criminal courts must not serve as tools for personal vendettas or to gain unwarranted advantages. Orders passed

under Section 175 BNSS should reflect a thorough application of judicial mind, ensuring that frivolous or malicious complaints are promptly dismissed.

19. To sum up, in family disputes triable by Magistrates, especially those involving close relatives, magistrates should strive to nurture an environment conducive to preserving and strengthening familial bonds. The focus should be on fostering harmony and emotional well-being, rather than perpetuating hostility. Resolving disputes amicably not only benefits the immediate parties involved but also safeguards future generations from the adverse impact of lingering animosities. Emphasis ought to be to encourage the enduring benefits of familial unity and cordiality, ensuring that the next generation inherits an atmosphere of harmony rather than hostility.

20. Petition is disposed of with the observations, as above.

(ARUN MONGA),J

Mohan/-

Whether fit for reporting : Yes / No