

Before

THE HONORABLE HIGH COURT OF RAJASTHAN

2016

UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE CODE, 1973

IN THE MATTER OF:

AITUC, ON BEHALF OF ITS MEMBERS - - - - - PETITIONER

V.

STATE OF RAJASTHAN AND ANOTHER - - - - - RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONER

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¶	Paragraph
&	And
AIR	All India Reporter
ALT	Andhra Law Times
AP	Andhra Pradesh
All.	Allahabad
Anr.	Another
Bom.	Bombay
Cal	Calcutta
CCR	Current Criminal Reports
CrPC	Criminal Procedure Code
Crl.A.	Criminal Appeal
Edn. / Ed.	Edition
FIR	First Information Report
Govt.	Government
GLR	Gujarat Law Reporter
Hon`ble	Honorable
I.L.R	Indian Law Reporter
Id.	Ibid
Ker	Kerala

L.J.	Law Journal
Ltd.	Limited
Mr.	Mister
Mad.	Madras
MLJ	Madras Law Journal
MPLJ	Madhya Pradesh Law Journal
No.	Number
HC	High Court
Ors.	Others
Pg.	Page
Raj.	Rajasthan
Re.	Reference
Pvt.	Private
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SC	Supreme Court
Sd/	Signed
UP	Uttar Pradesh
UOI	Union Of India
V.	Versus
Vol.	Volume

INDEX OF AUTHORITIES

CASES REFERRED

SUPREME COURT CASES

1. B.S. Joshi v. State of Haryana, App. (Cr.) 383 of 2003 (SC).
2. Prevention of Environment and Sound Pollution v. Union of India, AIR 2005 SC 3136.
3. K. Ramakrishnan and Anr. v. State of Kerala and Ors., AIR 1999 Ker 385.
4. Nagwwa v. Veeranna Shivalingappa Konjalgi, AIR 1976 SC 1947.
5. Raj Kapoor v. State, AIR 1980 SC 258.
6. Satish Mehra v. State of N.C.T. of Delhi and Anr. AIR 2013 SC 506.
7. Satish Mehra v. State of NCT of Delhi, AIR 2013 SC 506.
8. State of Andhra Pradesh v. P.V. Pavithran, 1990 AIR 1266.
9. State of U.P. v. R.K. Srivastava, AIR 1989 SC 2222.
10. Syndicate Bank & Anr. v. K. Umesh Nayak, AIR 1995 SC 319.
11. The Punjab National Bank Ltd. v. Its Workmen, AIR 1960 SC 160.
12. Y. Abraham Ajith & Ors. v. Inspector of Police, Chennai & Ors., 2004 SCC (Cri) 2134.

HIGH COURT CASES

1. AVTEC Limited Power Products Division v. Superintendent of Police, (2008) 4 MLJ 50.
2. K. Prabhakar Rao v. The State of A.P., 2015 (2) ALT (CrL.) 91 (A.P.).
3. K.C.P. Ltd. v. Inspector of Police, Tiruvottiyur and Ors., (1993) ILLJ 365 Mad.
4. M/s. Unikol Bottlers Ltd. v. M/s. Dhillon Kool Drinks & Anr, MANU/DE/0008/1995.
5. R.P. Khare v. State of M.P. & Ors., 2006 (4) MPLJ 436.
6. Ramjibhai Morarbhai Patel v. Additional Development, (1993) 2 GLR 1713.
7. Rampalat v. Corporation, AIR 1966 Cal. 99.
8. Sudin S. v. Union of India and Ors., AIR 2015 Ker 49.

STATUTES AND OTHER AUTHORITIES

1. Industrial Disputes Act, 1947.
2. Indian Penal Code, 1860.
3. Code of Criminal Procedure, 1973.
4. Indian Evidence Act, 1872.
5. Minimum Wages Notification, Govt. Of Rajasthan, January, 2014.

JOURNALS REFERRED

1. All India Reporters.
2. Crimes.
3. Criminal Law Journal.
4. Current Criminal Reports.
5. Gujarat Law Reporter.
6. Indian Law Reporter.
7. Madhya Pradesh Law Journal.
8. Madras Law Journal.
9. Supreme Court Cases.
10. Supreme Court Reporter.

BOOKS REFERRED:-

1. C. K. Takwani & M.C. Takwani, Criminal Procedure (3rd Ed., 2011), Lexis Nexis Butterworths Wadhwa, Nagpur.
2. Dr. K. I. Vibhute, P S A. Pillai Criminal Law (11th Ed., 2007) Lexis Nexis Butterworths Wadhwa, Nagpur.
3. John Woodroffe, Commentaries on Code of Criminal Procedure, 1972 (2009), Law Publishers (India) Pvt. Ltd.
4. Justice GP Singh, Principles of Statutory Interpretation (13th Ed., 2007), Lexis Nexis Butterworths Wadhwa, Nagpur.
5. K.D. Gaur, Commentary on the Indian Penal Code (2nd Ed., 2013), Universal Law Publishing Co Pvt Ltd.
6. K.D. Gaur, Criminal Law Criminology and Administration of Criminal Justice (3rd Ed., 2015), Universal Law Publishing Co Pvt. Ltd.
7. M.R. Mallick, R.K. Bag, A.N. Saha Criminal Reference (6th Ed., 2009), Eastern Law House.
8. R.P. Kathuria's, Law of Crimes and Criminology (3rd Ed., 2014), Vinod Publications.
9. S.C. Sarkar, P.C. Sarkar & Sudipto Sarkar, The Code Of Criminal Procedure (11th Ed., 2015), Lexis Nexis.
10. Sathe S.P., Administrative Law, (7th Ed., 2004), Lexis Nexis Butterworths Wadhwa.
11. Underhill's Criminal Evidence, Fifth d. Vol. I, p. 664.

LEGAL DICTIONARIES:

1. Aiyer P.R., Advanced Law Lexicon, (3rd Ed., 2005).
2. Garner B.A., Black's Law Dictionary, (9th Ed., 2009).
3. Greenberg Daniel, Stroud's Judicial Dictionary of Words and Phrases, (4th Ed.), Sweet and Maxwell, Vol. 4.
4. Mish F.C., Merriam-Webster's Collegiate Dictionary, (11th Ed. 2003).
5. Oxford Advanced Learners Dictionary, (7th Ed., 2008).

DATABASES REFERRED:-

1. <http://www.scconline.com> (last visited on 25th January, 2016).
2. <http://www.manupatra.com> (last visited on 26th January, 2016).
3. <http://www.westlaw.org> (last visited on 27th January, 2016).
4. <http://www.indiankanoon.com> (last visited on 25th January, 2016).
5. <http://www.lexisnexus.com> (last visited on 25th January, 2016).
6. <http://www.judis.nic.in> (last visited on 28th January, 2016).

STATEMENT OF JURISDICTION

The counsels representing the petitioner have endorsed their pleadings before the Hon`ble High Court of Rajasthan under Section 482<sup>1</sup> of the Code of Criminal Procedure, 1973 in which the Hon`ble Court has the jurisdiction.

The present memorandum sets forth the facts, contentions and arguments.

¹ **Section 482:** Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

STATEMENT OF FACTS

For the sake of brevity and convenience of the Hon`ble Court the facts of the present case are summarized as follows:

- Tamboora Cements is a registered and privately owned company which operates in the Indian state of Rajasthan.
- Its cement producing plant in Rajasthan employs 150 managerial level staff and 2500 workers who are engaged in various forms of manual and semi-manual labour employed on contract. Most of this labour force is illiterate and are made to affix their thumb impressions to the standard form contracts which are provided to them.
- In the year 2014, the majority of the labour force became dissatisfied with the management of the cement making plant in Rajasthan when it was suggested that their normal working shifts of 10 hours every day would be extended to 12 hours per day without any increase in the Rs160 daily wage which was provided to them.
- Sensing the dissatisfaction amongst the labour, the management decided on 15.12.2014 to summarily lay-off 200 people who were employed with the plant. They were asked to leave without notice and told not to return to the plant.
- As news of the dismissal of 200 people spread, the labourers decided that it was time for them to organise themselves into a labour union and collectively bargain with the management. For this purpose, they decided to form a trade union to take up their demands against the management. They requested Ms X, who was a well-known member of the AITUC to come to their village and help them organise.
- Ms X reached the village on the night of 31.12.2014 and met the workers of the plant. She was appalled at the working conditions prevalent in the cement manufacturing plant, as these were narrated to her by the workers. It seems that there was no system of compensation for workers who were injured during the operation of the plant. Similarly, there was no security of employment and dismissals and lay-offs were both common and arbitrary.
- Ms X suggested that the workers of the cement plant immediately become members of the AITUC to which most of the workers readily agreed. She also suggested that the workers go on a lightning strike the next day at the time they are supposed to present themselves at the plant for work. Ms X received the agreement of around 300 workers for the lightning strike. Out of these, 200 people were the ones who had been dismissed by the company some days ago.

- On 01.01.2015, at around 8:30 am, which was the usual reporting time for work, Ms X and 300 workers marched to the main gate of the plant and sat down in front of the gate. They refused to move from the same position and also did not allow the other workers, who were not striking, from approaching the gate and entering the plant premises.
- At the same time, led by Ms. X, the striking workers raised slogans and demands against the management. The effect of the entire demonstration was that work was not allowed to begin at the plant. Seeing what they perceived to be success, around 800 workers who were not previously striking also joined the strike and made a sit-in in front of the plant.
- At around 12:30 pm, at the insistence of the management, the police was called to the scene. The police arrested Ms X and transported her to the police station. They also resorted to lathi charge to clear the area around the gate of the plant and around 50 persons were taken into custody. Around 200 workers were injured in the lathi charge.
- In the evening, all 2500 members of the labour force entered into membership of the AITUC. Ms X was released by the police in the evening and upon returning to the village she informed the workers of the future course of action.
- The next morning, at around 5 am, which is beyond the normal working hours of the plant, around 1000 workers entered the compound of the plant by jumping over the boundary walls. They then proceeded to block the entry points into the plant building by a sit in. At the same time, another 1000 workers blocked the access road to the plant side by placing logs of wood and stones.
- They then proceeded to encircle the plant gate and raised slogans. It was made clear by them that no work would resume at the plant till the demands were met. Because of the blockade, around 10 managers of the plant were locked in. At the same time, no other person could enter the plant.
- The police registered an FIR against Ms X and other members of the labour force on the charges of conspiracy, trespass of property, nuisance, cheating, criminal intimidation and assault. With great difficulty, they arrested Ms X and several other workers.
- AITUC, on behalf of its members and against the management, files a S.482, Cr.P.C. petition before this Court seeking that the proceedings instituted be quashed. To which complainant/state opposed.

QUESTIONS PRESENTED

The following questions are presented before this Hon'ble court for adjudication in the instant matter:

- I. WHETHER THE COURT NEEDS TO EXERCISE ITS INHERENT POWER UNDER SECTION 482 OF CR.P.C.?**
- II. WHETHER THE STRIKE WAS LEGAL AND JUSTIFIED?**
- III. WHETHER THE CHARGES ARE SUSTAINABLE AGAINST Ms. X & THE WORKERS?**

SUMMARY OF ARGUMENTS

I. COURT NEEDS TO EXERCISE ITS INHERENT POWER UNDER SECTION 482 OF CR.P.C.

Firstly, facts and circumstances of the case, do not disclose the commission of the offence alleged against the accused.

Secondly, allegations made in the FIR, prima facie do not disclose a triable offence.

Thirdly, there is no reason as to why the accused should be made to suffer the agony of a legal proceeding which is bound to become lame or a sham.

II. THE STRIKE WAS LEGAL AND JUSTIFIED.

Firstly, strike was outcome of the arbitrary policies of the management.

Secondly, Strike declared by workers was completely legal and justified as they did not break any law.

III. THE CHARGES ARE NOT SUSTAINABLE AGAINST MS. X & THE WORKERS.

Firstly, charges of conspiracy, trespass of property, nuisance, cheating, criminal intimidation and assault are not sustainable as the acts of the workers do not attract any of the ingredients of all the offences.

Secondly, there is no criminal trespass by Ms. X and the workers.

Thirdly, their act does not constitute offences of cheating, criminal intimidation, public nuisance and assault.

PLEADINGS AND AUTHORITIES

I. COURT NEEDS TO USE ITS INHERENT POWER UNDER SECTION 482 OF CR.P.C.

1. In the present case, petition is filed to quash the proceedings going in trial court as it is the settled principle of criminal jurisprudence that the criminal law may be set in motion by giving information to the police of a cognizable offence. However, proceedings can be said to have been instituted within the language of criminal law when actually criminal proceedings are instituted in the Court of law and not otherwise.²
2. Now, it is significant to mention that in the present case, Hon'ble High Court can use its inherent power to quash the proceedings because it is a settled position of law that High Court can quash the proceedings instituted against the accused if charges mentioned in FIR, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.³ In simple words, if facts and circumstances of the case, do not disclose the commission of the offence alleged against the accused in the FIR, court can quash the criminal proceedings instituted on the basis of such FIR.⁴
3. In the present case, there are only two cognizable offences, which are mentioned in the FIR i.e. cheating and trespass to property. However, facts and circumstances of the present case do not disclose the commission of such offences. Firstly, there is no deception to the management by either Ms. X or the workers which is the prima facie ingredient to be established to constitute an act as cheating. Secondly, mere entering into the plant premises does not constitute criminal trespass as there should be further intention of doing any illegal act. However, in the present case workers only asked the management to fulfill their demand, which does not constitute the necessary mens rea, prima facie required for criminal trespass.
4. Supreme Court clearly held that, in cases where the allegations made in the FIR or the criminal complaint, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding which is bound to become lame or a sham.⁵

² *Ramjibhai Morarbhai Patel v. Additional Developmen*, (1993) 2 GLR 1713.

³ *Satish Mehra v. State of N.C.T. of Delhi and Anr.*, AIR 2013 SC 506.

⁴ *State of UP v. R.K. Srivastava*, AIR 1989 SC 2222.

⁵ *Ibid* at 3; See also: *Raj Kapoor v. State*, AIR 1980 SC 258, *Nagwwa v. Veeranna Konjalgi*, AIR 1976 SC 1947.

5. Therefore, on the basis of above laid down conditions, Court can use its inherent power to quash⁶ the instituted proceedings against Ms. X and other workers.

II. THE STRIKE WAS LEGAL AND JUSTIFIED.

6. Strike declared by workers was completely legal and justified. Workers did not break any law and the strike was outcome of the arbitrary policies of the management.

A. Strike was the outcome of the arbitrary policies of the management.

7. In the present case, strike was justified because it was outcome of policies of the management. It is given that 200 workers were dismissed just because of dissatisfaction among them. However, no such ground of dismissal is mentioned in the 'Rajasthan Model Standing Order'. It is also given that form of the contract was also standard which means workers had no say in the determination of terms of employment.⁷ There was also no job security, no system of compensation for the workers who got injured during the work, lay-offs and dismissal were arbitrary and even the wages were less than minimum wages⁸ which are required to pay to the workers.

8. It is significant to mention that, Hon'ble Apex Court has stated that in determining the justifiability of the strike, service conditions of the workmen, causes which led to strike and nature of demands has to be seen.⁹ In the present case all factors have been established which were laid down by Hon'ble Apex Court. Thus, strike of the workers was outcome of arbitrary policies of the management that is why strike was justified.

B. Strike declared by workers was completely valid in the eyes of the law.

9. Tamboora Cements owns cement producing plant, meaning thereby, it is a non-public utility service because cement industries have not been declared public utility service by either central government or state government. Thus, lightning strike was legal because in case of non-public utility services, strike can be declared without giving notice.¹⁰
10. Any worker who is on strike, forces other workers to join the strike or obstruct their way then such act of worker does not make strike illegal. However, management can separately issue notice to such workers regarding their conduct but such conduct does not make strike illegal. Thus, not allowing the other workers to enter into the plant by the striking workers does not make strike illegal.

⁶Y. Abraham Ajith & Ors. v. Inspector of Police, 2004 SCC (Cri) 2134; See also: B.S. Joshi v. State of Haryana, App. (Cr.) 383 of 2003 (SC), State of Andhra Pradesh v. P.V. Pavithran, 1990 AIR 1266

⁷M/s. Unikol Bottlers Ltd. v. M/s. Dhillon Kool Drinks & Anr, MANU/DE/0008/1995

⁸Minimum Wages Notification, Govt. of Rajasthan, January, 2014.

⁹Syndicate Bank & Anr. v. K. Umesh Nayak, AIR 1995 SC 319.

¹⁰As per sections 22 & 23, Industrial Disputes Act, 1947.

11. Furthermore, 1100 workers had occupied the gate, they were removed by police through ‘lathi charge’, which is a grave violation of set procedure because Judiciary has time and again held that management is required to take injunction from the Court if they want to remove striking workers from the entrance gate.¹¹

C. Occupying plant by all the workers was an act of strike.

12. In the present case, workers entered into plant at 5 am which was beyond the normal working hours and blocked the entry points and access road to the plant. However, such a way to entering into working premises does not amount to any illegal act, if intention of the workers is to go on strike.¹² In the present case workers after entering inside the plant, sat at the entry points and clearly stated that they would not resume the work until their demands are fulfilled which means they did not have any other intention but to go on strike because as per section 2(q) of the ID Act, strike means cessation of work. Therefore, their act of entering into the working premises even beyond the working hours will still amount to strike.

III. CHARGES ARE NOT SUSTAINABLE AGAINST MS. X & THE WORKERS.

13. It is humbly submitted that the charges of conspiracy, trespass of property, nuisance, cheating, criminal intimidation and assault are not sustainable as the acts of the workers do not attract any of the ingredients of all the offences.

A. There was no criminal conspiracy by Ms. X and the workers.

14. In the present case, Ms. X and the workers cannot be charged under S. 120B of I.P.C because firstly, the act of strike was not illegal at any time, and secondly, the agreement was done for a legal act which was conducted in a lawful manner and it has been already established that stopping other workers to work does not in itself make the strike illegal. It is a settled position of law that there has to be malice intent on the part of conspirators to constitute an offence of criminal conspiracy.¹³ However, in the present case the action of both, Ms. X and the workers was in good faith i.e., only to raise their demands and do a peaceful protest by a sit in against the management.

B. There is no criminal trespass by Ms. X and the workers.

15. In the present case, Ms. X & the workers have entered the compound of the plant and because of this fact management has charged them with criminal trespass under S. 447 of

¹¹AVTEC Ltd. Power Products Division v. The Superintendent of Police and Ors., (2008) 4 MLJ 50; See also: K.C.P. Ltd. v. Inspector of Police, Tiruvottiyur and Ors., (1993) ILLJ 365 Mad.

¹²The Punjab National Bank Ltd. v. Its Workmen, AIR 1960 SC 160.

¹³R.P. Khare v. State of M.P. & Ors., 2006 (4) MPLJ 436.

I.P.C. It is an undisputable fact that Ms. X & the workers have entered the plant and it is undisputed that they were there against the will of the management, thus, satisfying the two ingredients of criminal trespass. However, the main ingredient of criminal trespass which is required to establish the case prima facie i.e. intention to commit an illegal act was never there.

16. In the present case, the sole intention of Ms. X & the workers was to put pressure on the management to concede to their demands. Hon'ble Apex Court has also held that even if the strikers might have known that the strike may annoy or insult the management, nowhere it can be said that this knowledge would necessarily lead to the inference of the requisite intention under S. 441.¹⁴ Further, court stated that even if it is assumed that the employees' entry in the premises was unlawful or that their continuance in the premises is unlawful, still intention of the act of the employee has to be seen irrespective of the knowledge of the act.
17. The distinction between knowledge and intention is quite clear in the present case as the object of Ms. X & the workers was to pressurize the management which does not constitute the necessary 'mens rea' required under S. 441. Hence, the charge of criminal trespass cannot be said to be prima facie establish.

C. Act of Ms. X & the workers does not constitute offences of cheating, criminal intimidation, public nuisance and assault.

18. In the present case, there is no applicability of criminal intimidation, cheating, public nuisance and assault.
i) Ingredients of offence of criminal intimidation are not attracted.
19. Ms. X and the workers have been charged with criminal intimidation under S. 506. As per Section 503 of IPC, the intimidation must be such that, it must cause alarm to the complainant or the victim with fear of causing harm or injury to him.¹⁵
20. Now, it is important to note that in the present case, workers have announced that until their demands are not fulfilled, no work would resume. They are nowhere threatening management with any injury, what they are doing is a form of boycott to make management realize their worth. It is a settled position of law that threat of boycott by the industrial workers to fulfill the demands, is not a threat of injury to constitute criminal

¹⁴Supra note 13.

¹⁵K. Prabhakar Rao v. The State of A.P., 2015 (2) ALT (CrI.) 91 (A.P.)

intimidation.¹⁶ There is nothing from the material on record in present case to attract Section 503 IPC, thus, the charge of criminal intimidation is not sustainable.

ii) Ingredients of offence of public nuisance are not attracted.

21. In the present case, it is given that 1000 workers have entered the plant premises. It is alleged by the management that by trespassing the plant premises they have caused public nuisance. It is to be noted that the offence of public nuisance cannot be committed inside a private property. It is observed by the various courts that an offence of public nuisance can only be committed in a public sphere and not in a private sphere.¹⁷ Thus, it can be said that the act of entering the plant premises does not result into public nuisance.
22. In addition to above, it is given that other 1000 workers have blocked the access road to the plant. It is a settled position of law that nature of the area and other surrounding circumstances has to be considered to determine that whether an act is a public nuisance.¹⁸ In the instant case workers have blocked the access road to the plant and the front gate. Now, it is important to understand that every plant like cement plant is established in outskirts of the city, where there is no possibility of general public. Further, only that road was blocked which goes towards the plant. Thus, from the general public nobody can face any inconvenience because neither there is any possibility of dwelling people in the area of cement plant nor in relation to the blockage of access road towards plant. It can be seen that the plant area is a private area and not a public place where the common public has a public right to move freely. Hence, it can be safely concluded that the charge of public nuisance is non-sustainable.

iii) Ingredients of offence of assault are not attracted.

23. In the present case, act of Ms. X and the workers does not amount to assault under S. 352 of I.P.C as the ingredients of the offence are not satisfied. It is required under this section that the accused should have knowledge of the presence of the victim at the place of incident.
24. Now, it has to be seen that whether the workers or Ms. X were having any knowledge of the presence of ten managers who were locked in. It is given in the facts that workers entered the plant premises at around 5am, which is beyond normal working hours of the plant, so it can be inferred that workers were not aware of the presence of ten managers in the plant as the time was beyond normal working hours of the plant and their intent was

¹⁶Sudin S. v. Union of India and Ors., AIR 2015 Ker 49

¹⁷Prevention of Environment and Sound Pollution v. Union of India & Anr., AIR 2005 SC 3136; See also: K. Ramakrishnan And Anr. v. State Of Kerala And Ors., AIR 1999 Ker 385.

¹⁸Rampalat v. Corporation, AIR 1966 Cal. 99.

to raise their demands against the management and not commissioning of assault. Thus, act of Ms. X and the workers does not amount to assault.

iv) Ingredients of offence of cheating are not attracted.

25. In the present case, Ms. X and the workers have also been charged with the offence of cheating under S. 417 of I.P.C. In order to establish commission of offence of cheating, it needs to be seen that whether there was any deception by the accused.¹⁹ In the present case there are no factual circumstances to establish that Ms. X or the workers have deceived the management so as to cause or likely to cause damage or harm to the managements' reputation or property. Accordingly, it can be said that the charge of cheating was totally fabricated.

26. Hence, all the charges are not sustainable in the present case.

¹⁹ Section 415, Indian Penal Code, 1860.

PRAYER FOR RELIEF

Wherefore, in light of the facts stated, issues raised, authorities cited & arguments advanced, Hon'ble High Court of Rajasthan may be pleased to *adjudge & declare that*:

1. Charges mentioned in FIR are not established prima facie.
2. Proceeding instituted against Ms. X and other workers is quashed.

AND

Pass any other order that it may deem fit in the interest of justice, equity & good conscience.

All of which is most humbly prayed.

On behalf of

AITUC, ON BEHALF OF ITS MEMBERS

Counsels for the Petitioner

Sd/