

**CRR-3218-2019 (O&M) &
CRR-86-2020 (O&M)**

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2024.PHHC.075251



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

**CRR-3218-2019 (O&M)
Reserved on 16.04.2024
Date of Pronouncement:30.04.2024.**

RANJIT AND ANOTHERPetitioners
Versus

STATE OF PUNJAB AND OTHERS ..Respondents

CRR-86-2020 (O&M)

BALRAJ SINGHPetitioner
Versus

STATE OF PUNJAB AND ANOTHER ..Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. T.P.S.Tung, Advocate,
for the petitioners in CRR-3218-2019.

Mr. Karanjit Singh, Advocate,
for the petitioners in CRR-86-2020.

Mr.Pardeep Bajaj, DAG, Punjab.

Mr. Vipin Mahajan, Advocate,
for the respondents.

KULDEEP TIWARI, J.

1. Both the petitions are amenable to be decided together being arisen out of the same summoning order dated 23.09.2019, passed by the learned Sessions Judge, Gurdaspur, whereby petitioners-Sanjamdeep

Singh alias Sanjampreet Singh (in CRR-3218-2019) and Balraj Singh (in CRR-86-2020) alongwith one Jasbir Singh have been summoned to face trial for the commission of offence punishable under Section 302 read with Sections 149 and 148 IPC, and petitioner-Ranjit Singh alias Harjit Singh in CRR-3218-2019, has been summoned under Sections 302 and 148 of the IPC, and under Section 25 of the Arms Act, in case FIR No.05, dated 18.01.2019, registered at Police Station Dera Baba Nanak, upon an application filed under Section 319 Cr.P.C.by the learned Public Prosecutor.

2. The impugned order (*supra*), has been assailed mainly on the basis of non-adhering to the basic principle of the provisions of Section 319 Cr.P.C., and further, on the ground that except the examination-in-chief of complainant as PW-1/Balkar Singh (private respondent herein), there is no other evidence on record to substantiate his version. Therefore, in the absence of the same, the learned trial Court concerned, in most mechanical manner passed the aforesaid impugned order, and summoned the present petitioners to face trial alongwith co-accused.

BRIEF FACTS

3. Before this Court embarks upon the legality of the impugned summoning order passed by the learned trial Court concerned, it is first apt to first deal with the facts of the present case.

4. In the instant case, the prosecution agency was set into motion in the statement/complaint made by Balkar Singh son of Puran Singh, wherein, he stated as under:-

"Statement of Balkar Singh S/o Late Puran Singh caste Jatt, resident of

Padda, Police station Dera Baba Nanak, aged about 80-82 years stated that I am the resident of above mentioned address and I am an agriculturalist. My residence is nearby the Village in a colony. I had come to Village Padda for a personal work. When I reached in front of the house of Bawa Singh S/o Tehal Singh, caste Jatt, resident of Padda, it was around 4:30 PM in the evening today. My nephew Rashpal Singh S/o Gurdeep Singh caste Jatt, resident of Village Padda was coming on a bullock cart carrying the cattle fodder. He was coming from the side of Gurdwara Baba Sidh Saunh towards the village. Alongwith him, Inderjeet Singh S/o Gurmeet Singh and Gurbhej Singh S/o Ajit Singh caste Jatt, residents of Padde were also coming. When Rashpal Singh reached on the turn near the house of above Bawa Singh, Sukhdev Singh alias Sukha armed with rifle, Lalli, Balraj Singh Sons of Surjeet Singh, Harjeet Singh S/o Bawa Singh, Sanjampreet Singh S/o Harjeet Singh, Jasbir Singh S/o Bhagwant Singh caste Jatt, residents of Padde, all empty handed were already standing there on a Swaraj Tractor 555. Out of them, Jasbir Singh raised a lalkara and said "to catch hold of him and teach him a lesson for helping Ajit Singh S/o Karnail Singh caste Jatt resident of Padde". In the mean time above Sukhdev Singh with his rifle fired a direct shot on above Rashpal Singh with an intention to kill him which hit his left shoulder. Then above Lalli S/o Surjeet Singh snatched the rifle from Sukhdev Singh and fired a direct shot on Rashpal Singh which hit the left side of his chin. Both Sanjampreet Singh Son of Harjeet Singh and Balraj Singh S/o Surjeet Singh, kept on provoking them that don't let Rashpal Singh go easily. In the mean time Harjeet Singh Son of Bawa Singh snatched the rifle from Lalli Son of Surjeet Singh and fired a direct shot on above Rashpal Singh which hit on the left side of his neck. Rashpal Singh was bleeding and he fell on the ground. On this, all above mentioned accused persons ran from the spot alongwith the rifle, leaving behind the tractor. I and Inderjet Singh, Gurbhej Singh witnessed this incident with our own eyes. The reason behind the incident is that Surjeet Singh S/o Banta Singh had a fight yesterday i.e. 17.01.2019 with Ajit Singh S/o Karnail Singh caste Jatt resident of Padde and in this Rashpal Singh due to party factionalism, used to help Ajit Singh. I and Inderjeet Singh, Gurbhej Singh had arranged a vehicle and was taking him to Fatehgarh Churrian for treatment, but Rashpal Singh died on the way, despite that also we took him to the Civil Hospital Fatehgarh Churrian where he was checked by a Doctor and was declared brought dead. I left Inderjeet Singh beside the dead body and I alongwith Gurbhej Singh were going to inform you and met us on the way, legal action be initiated. Sd/- Balkar Singh above attested Surjeet Raj S.I. incharge Police Station Dera Baba Nanak dated 18.01.2019."

5. On the basis of the above complaint, the instant FIR, was registered and the investigation was carried out.
6. During investigation, it was found that one of the petitioner Balraj Singh, was not present in the village on the date of occurrence, rather he had gone to Amritsar, on the night of dated 17.01.2019, for the

treatment of his wife at Satjot Hospital, Amritsar, and remained there till dated 19.01.2019.

7. After thorough investigation the plea of *alibi* as set by the Balraj Singh, DSP Harinder Singh, recorded a DDR bearing No.19, dated 15.02.2019, in this regard, and declared the petitioner-Balraj Singh innocent, and also in the similar manner it was found by the investigating agency that petitioners-Ranjit Singh alias Harjit Singh, and Sajamdeep Singh (in CRR-3218-2019), alongwith one Jasbir Singh were innocent, and they were not found involved in the commission of the alleged crime, and ultimately a final report under Section 173 Cr.P.C. was filed, only against Sukhdev Singh alias Sukha and Lovejinder Singh alias Lalli.

8. Thereupon, the charges were framed against aforesaid two accused who were sent to face trial by the prosecution agency vide order dated 22.05.2019, by the learned trial Court concerned.

9. The complainant/private respondent-Balkar Singh, stepped into the witness box as PW-1, and after completion of his examination-in-chief, the prosecution preferred an application under Section 319 Cr.P.C. for summoning the present petitioners alongwith one Jasbir Singh to face trial.

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE PETITIONERS

10. Learned counsel for the petitioners in assailing the impugned order, submits that despite the aforesaid three petitioners/accused alongwith other co-accused, being declared innocent after a detailed investigation the learned trial Court concerned, only on the examination-

in-chief suffered by the complainant-Balkar Singh as PW-1, proceeded to summon the present petitioners, in a mechanical manner, to face the trial.

11. He further submits that the complainant-Balkar Singh, has brought on record no new evidence, rather he only reiterated the version of the FIR. Even there is no discussion made by the learned trial Court concerned, in the impugned order, whether, the ocular testimony of PW-1-Balkar Singh, supported by any cogent material evidence on record or not.

12. He also submits that the learned trial Court concerned, only reproduced the statement of complainant-Balkar Singh as PW-1 in the impugned order, and proceeded to pass the impugned order (*supra*), without giving any finding on the said statement.

SUBMISSIONS MADE BY LEARNED STATE COUNSEL

13. On the other hand, learned State counsel, has vociferously opposed the asked for relief and submits that the present petitioners have been rightly summoned to face the trial and there is no infirmity and illegality in the impugned order (*supra*).

**SUBMISSIONS MADE BY PRIVATE RESPONDENT NO.4/
COMPLAINANT.**

14. Learned counsel for respondent no.4 submits that the aforesaid petitioners, were present at the spot of occurrence, however, no scientific evidence was collected by the investigating officer, to show the presence of accused persons at some other place neither any CCTV footage, nor mobile phone tower locations were collected and examined by the prosecution agency.

15. He further submits that petitioner-Balraj Singh, who is stated to have spent night at a hospital in Amritsar on dated 17.01.2019, and at Darbar Sahib on dated 18.01.2019, the CCTV footage from the cameras installed at both the places have not been taken to ensure his presence, by the investigating officer, during the investigation. Even otherwise, the distance between the place of occurrence, and Amritsar is merely of 40 kms.

16. He also submits that the instant case is based on eye-witness account and the complainant has duly supported his version in the Court.

LEGAL ANALYSIS

17. Before embarking upon the process of evaluating the contentions raised by the learned counsels for the contesting litigants, and thereupon, penning down any opinion upon the validity of the impugned summoning order, it is deemed imperative to first capture an overview of some significant legal propositions.

18. The scope of Section 319 of the Cr.P.C. has been considered and enunciated by the Hon'ble Supreme Court and by this Court also, in a *catena* of judgments, whereupon, it has been held that, during the pendency of inquiry or trial, the trial Court has jurisdiction to proceed against a person for the offence, which he appears to have committed, if, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that such person, not being the accused, has committed any offence, for which he could be tried together with the accused, under Section 319(1) of the Cr.P.C.

19. The Hon'ble Supreme Court in "**Sohan Lal vs State of Rajasthan**", AIR 1990 SC 2158, while explaining the scope of Section 319 of the Cr.P.C., has held that, this Section empowers the trial Court to proceed against a person, not being the accused, "appearing to be guilty" of an offence. The relevant extract of **Sohan Lal's** judgment is extracted hereinafter:-

"This section empowers the Court to proceed against persons not being the accused appearing to be guilty of offence. Sub-sections (1) and (2) of this section provide for a situation when a Court hearing a case against certain accused person finds from the evidence that some person or persons, other than the accused before it is or are also connected in this very offence or any connected offence; and it empowers the court to proceed against such person or persons for the offence which he or they appears or appear to have committed and issue process for the purpose. It provides that the cognizance against newly added accused is deemed to have been taken in the same manner in which cognizance was first taken of the offence against the earlier accused. It naturally deals with a matter arising from the course of the proceeding already initiated. The scope of the section is wide enough to include cases instituted on private complaint."

20. Moreover, in "**Hardeep Singh Vs. State of Punjab and Others**", (2014) 1 RCR (Criminal) 623, the Constitution Bench of the Hon'ble Supreme Court has, besides making consideration qua the degree of satisfaction required to invoke the provisions of Section 319 of the Cr.P.C. to arraign an accused, also rendered an answer thereto. The relevant extract of this judgment is reproduced hereinafter:-

"85. Thus, in view of the above, we hold that power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination in chief and court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

Q. (iv) What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?

86. Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court.

The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

87. In **Pyare Lal Bhargava v. The State of Rajasthan, AIR 1963 Supreme Court 1094**, a four-Judge Bench of this Court was concerned with the meaning of the word 'appear'. The court held that the appropriate meaning of the word 'appears' is 'seems'. It imports a lesser degree of probability than proof. In **Ram Singh & Ors. v. Ram Niwas & Anr., 2009(3) RCR (Criminal) 501 : 2009(4) Recent Apex Judgments (R.A.J.) 261 : (2009)14 SCC 25**, a two Judge Bench of this Court was again required to examine the importance of the word 'appear' as appearing in the Section. The Court held that for the fulfillment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case.

88. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 Cr.P.C., though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two Judge Bench of this Court in **Vikas v. State of Rajasthan, 2013(4) RCR (Criminal) 948 : 2013(6) Recent Apex Judgments (R.A.J.) 356 : 2013(11) SCALE 23**, held that on the objective satisfaction of the court a person may be 'arrested' or 'summoned', as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

89. In **Rajendra Singh** (Supra), the Court observed :
"Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is "may" and not "shall". The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."

90. In **Mohd. Shafi** (Supra), this Court held that it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted.

91. In **Sarabjit Singh & Anr. v. State of Punjab & Anr., 2009(3) RCR (Criminal) 388 : 2009(4) Recent Apex Judgments (R.A.J.) 144**, while explaining the scope of Section 319 Cr.P.C., a two-Judge Bench of this Court observed :

"....For the aforementioned purpose, the courts are required to apply

stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.....Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied." (Emphasis added)

92. In **Brindaban Das & Ors. v. State of West Bengal, 2009(1) RCR (Criminal) 672 : 2009(1) Recent Apex Judgments (R.A.J.) 400**, a two-Judge Bench of this Court took a similar view observing that the court is required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section 319 Cr.P.C. entails a de novo trial and a large number of witnesses may have been examined and their reexamination could prejudice the prosecution and delay the trial, the trial court has to exercise such discretion with great care and perspicacity. A similar view has been reiterated by this Court in **Michael Machado & Anr. v. Central Bureau of Investigation & Ors., 2000(2) RCR (Criminal) 75**.

93. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The Court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide: **State of Karnataka v. L. Munishwamy & Ors., AIR 1977 Supreme Court 1489**; **All India Bank Officers' Confederation etc. v. Union of India & Ors., AIR 1989 Supreme Court 2045**; **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715**; **State of M.P. v. Dr. Krishna Chandra Saksena, 1997(1) RCR (Criminal) 556 : (1996) 11 SCC 439**; and **State of M.P. v. Mohan Lal Soni, 2000(3) RCR (Criminal) 452**).

94. In **Dilawar Babu Kurane v. State of Maharashtra, 2002(1) RCR (Criminal) 451**, this Court while dealing with the provisions of Sections 227 and 228 Cr.P.C., placed a very heavy reliance on the earlier judgment of this Court in **Union of India v. Prafulla Kumar Samal & Anr., AIR 1979 Supreme Court 366** and held that while considering the question of framing the charges, the court may weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the materials placed before this

Court disclose grave suspicion against the accused which has not been properly explained. In such an eventuality, the court is justified in framing the charges and proceeding with the trial. The court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

95. In **Suresh v. State of Maharashtra, 2001(2) RCR (Criminal) 278**, this Court after taking note of the earlier judgments in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, 1991(1) RCR (Criminal) 89** and **State of Maharashtra v. Priya Sharan Maharaj, 1997(2) RCR (Criminal) 634**, held as under :-

"9.....at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction." (Emphasis supplied)

96. Similarly in **State of Bihar v. Ramesh Singh, AIR 1977 Supreme Court 2018**, while dealing with the issue, this Court held : ".....If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....."

97. In **Palanisamy Gounder & Anr. v. State, represented by Inspector of Police, 2006(2) RCR (Criminal) 235 : (2005) 12 SCC 327**, this Court deprecated the practice of invoking the power under Section 319 Cr.P.C. just to conduct a fishing inquiry, as in that case, the trial court exercised that power just to find out the real truth, though there was no valid ground to proceed against the person summoned by the court.

98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C.

In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.

21. The herein above, discussed legal propositions elucidate that much stronger evidence, rather than mere probability of complicity and mere existence of prima facie case, is required to proceed against any person, under Section 319 of the Cr.P.C. It is now the settled proposition of law that, mere suspicion cannot constitute the bedrock for summoning of a person, in exercise of powers conferred by Section 319 of the Cr.P.C., rather exercise of this provision must be anchored upon existence of cogent evidence and not in a casual or cavalier manner. The test, that has to be applied, is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

REASONS

22. The role of each petitioner/accused as attributed in the instant FIR, can be summarised as under:-

Sr.	Accused	Role
1.	Sukhdev Singh @ Sukha	Fired from rifle on deceased
2.	Lovejinder Singh @ Lalli	Fired on deceased
3.	Balraj Singh	Provoking main accused to kill the deceased
4.	Ranjit Singh @ Harjit Singh	Snatched riffle from Lovejinder Singh and fired at Raschpal
5.	Sanjamdeep Singh alias Sanjampreet Singh	Provoking main accused to kill the deceased
6.	Jasbir Singh	Lalkara

23. It transpires from the above that except upon Ranjit Singh alias Harjit Singh, no overt act is attributed to other petitioners/co-accused-Balraj Singh and Sanjamdeep Singh alias Sanjampreet Singh.

24. On the touchstone of the above legal parameters, this Court has examined the facts of the instant matter and the impugned order as formed the bedrock for summoning the present petitioners in both the petitions, alongwith other co-accused, was on the sole testification of private respondent/complainant-PW-1.

25. There is no whisper about any other material which can connect the present petitioners with the alleged crime, what to talk about any corroboration to the ocular testimony. Even otherwise, the role which assigned to present petitioners/accused-Balraj Singh and Sanjamdeep Singh alias Sanjampreet Singh, only provoking the main accused, and no other attribution is assigned to them.

26. From the above discussion, this Court has come to a specific conclusion that there is a specific role attributed to petitioner no.1-Ranjit Singh alias Harjit Singh, who infact snatched the riffle from one Lalli, and fired upon Rashpal Singh, which later on hit his left side of chin, which fact is also supported by the medical evidence. Therefore, this Court is disinclined to interfere in the summoning order *qua* petitioner no.1-Ranjit Singh alias Harjit Singh (in CRR-3218-2019).

27. No role is assigned to petitioner-Balraj Singh (in CRR-86-2020) and petitioner no.2-Sanjamdeep Singh alias Sanjampreet Singh (in CRR-3218-2019), except of exhorting *lalkara*, and provoking the other

co-accused. However, this assertion has not been supported by any material evidence on record, except the repetition of allegations in the FIR by complainant-Balkar Singh in his statement as PW1, no evidence has yet come on record, which could establish culpability of petitioner Balraj Singh and Sanjamdeep Singh alias Sanjampreet Singh.

FINAL ORDER

28. Resultantly, **CRR-3218-2019 stands dismissed *qua* petitioner no.1-Ranjit Singh alias Harjit Singh**, however, **allowed *qua* petitioner no.2-Sanjamdeep Singh alias Sanjampreet Singh**, whereas **CRR-86-2020, is hereby allowed *qua* sole petitioner-Balraj Singh.**

29. It is made clear that the private respondent/complainant and prosecution, shall be at liberty, to invoke the provisions of Section 319 Cr.P.C. if cogent and convincing evidence warranting the summoning of the petitioners-Sanjampreet Singh and Balraj Singh, is found, at a subsequent stage of the trial.

30. All pending application(s), if any, also stands disposed of.

31. A photocopy of this order be placed on the file of the connected case.

April 30, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No