



C.M.A(MD)No.508 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.11.2023

Delivered on: 21.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A(MD)No.508 of 2021

R.Ganesh Kumar

... Appellant/Petitioner

Vs.

B.Akilandeshwari

... Respondent/Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act against the fair and decretal order passed by the Family Court, Trichirappalli in H.M.O.P.No.217 of 2016, dated 12.03.2021.

For Appellant : Mr.A.Arumugam
for Mr.K.Muthumalai

For Respondent : Mr.A.Zubhitha Banu



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JUDGMENT

RMT.TEEKAA RAMAN,J.

Husband is the appellant herein. Husband filed H.M.O.P.No.217 of 2016 before the Family Court, Tiruchirappalli for dissolution of marriage solemnized between the parties on 13.02.2014 on the ground of cruelty. After trial, the petition was dismissed and hence, the husband filed the above Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court as husband and wife.

3. The brief facts leading to filing of the above Civil Miscellaneous Appeal are as follows:

(a) The marriage between the parties was solemnized on 13.02.2014 as per the Hindu Customs and Rights. As per the pleadings, the respondent / wife has left the matrimonial home on 06.04.2014, namely, 54th day of marriage life and they are living separately since then.



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(b) Initially, the petitioner / husband has filed a petition for judicial separation, namely H.M.O.P.No.649 of 2014 before the Sub Court, Tambaram. Thereafter, he filed a petition for divorce in H.M.O.P.No.404 of 2015 before the very same Court. By the order of this Court, the case was transferred from the file of the Sub Court, Tambaram to the file of the Family Court, Tiruchirappalli and renumbered as H.M.O.P.No.217 of 2016.

(c) A petition is filed under Section 13(i-a) of the Hindu Marriage Act seeking dissolution of marriage on the ground of cruelty. The marriage between the husband and wife solemnized on 13.02.2014 at Nattanmai Thirumalai Pillai mahal, Cumbum as per the Hindu rites and rituals.

(d) As per the husband's version, even before the marriage, problems erupted between the parties. During the betrothal ceremony on 12.02.2014, the respondent / wife and her parents refused to follow the traditions and customs of the petitioner and caused extreme embarrassment and disrespect to the petitioner's / husband parents and their relatives.



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(e) After the marriage on 13.02.2014, the petitioner and the respondent went to the petitioner's ancestral home at Cumbum along with his parents and returned back to the matrimonial home at Chennai on 21.02.2014.

(f) The next allegation is that on 16.02.2014, two unknown persons came to the petitioner's home and called upon the petitioner and the respondent alone to accompany them to Trichy for the reception organized by the respondent's parents, without extending any invitation to the petitioner's parents. However, the petitioner's parents keeping in mind the future of the petitioner did not make any issue out of the above act and accompanied the petitioner to Trichy to participate in the reception. Even during the reception and after the reception, the respondent's parents did not bother about the petitioner or parents and left them high and dry and the petitioner was left to make his own arrangements towards coming back to Chennai.

(g) The respondent never showed any interest in leading a normal matrimonial life with the petitioner and used to behave with the petitioner in an abnormal manner. The respondent used to pick up quarrel with the petitioner on the slightest pretext.



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(h) Another incident, namely, on 06.04.2014, the respondent's father with the company of few relatives came to the matrimonial home at Chennai and forcibly took the respondent along with them to Trichy. Despite repeated pleas of the petitioner to the respondent not to go along with her parents and to wait for another 15 days so as to enable the petitioner to apply for leave to accompany the respondent to her parents house at Trichy, fell on deaf ears. The respondent brushing aside all the requests and pleas of the petitioner and his family members walked out of the matrimonial home along with her father and other relatives. Only later, it had come to the knowledge of the petitioner that the respondent had left the matrimonial home on the instruction of her parents just to sell their ancestral properties in which the respondent also was obliged to sign.

4. The husband issued legal notice on 19.04.2014 to the respondent calling upon her to convey her intentions whether she was interested in continuing with the relationship with the husband or not. Reply notice was issued by the respondent / wife on 03.05.2014. The petitioner again sent a rejoinder notice on 19.06.2014.



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5. The next allegation is that the wife has made a complaint against the husband, his parents and his sister with untenable allegations under Domestic Violence Act, 2005 in M.C.No.27 of 2015 before the Additional Mahila Court, Tiruchirappalli on 11.02.2015 and it has caused mental cruelty to the husband and the said petition was dismissed. It remains to be stated that these allegations have come by way of amendment in I.A.No.1 of 2020, dated 28.02.2020 and the said allegations were not stated in the original divorce petition.

6. In the counter statement with regard to the alleged cruelty, the wife has denied various allegations and also stated both in her counter statement as well as in her evidence as R.W.1 that a day prior to the date of marriage, the family members of the husband has entered into the room of the respondent / wife and asked to verify whether the gold jewels wear by the wife are genuine and wanted to check the same and for that, they locked the room and this caused a great embarrassment to the family members of the wife and they threatened the bride's side that if not allowed to check the same, they will not conduct the marriage and thereby, bride was subjected to mental cruelty.



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7. On 16.02.2014, the reception was arranged by the wife's parents and the invitation was duly printed and the same was informed to the husband's side as well as his parents. Since the husband and his father have demanded a sum of Rs.5001/- as Sreedhana for attending the marriage reception and they created a problem and thereafter, in order to pacify the same, the father of the wife has given a sum of Rs.5,001/- and invited them for reception and in the reception, both the husband and his family members totally 20 numbers have attended the marriage reception hosted by the wife's father at Trichy and during the said reception, they have given due respect to the family members of the husband.

8. During the cross-examination of the wife, who was examined as R.W.1, the learned counsel for the husband has specifically suggested that at the time of fixing the Metti (Foot ring) there was a commotion between the parties on the date of marriage itself, without disclosing the fact that as per their customs, it is for the wife's side to bring the Metti. The wife side has stated that it is a customary practice to bring the Metti from the husband's side. However, it is specifically suggested to R.W.1 that the husband refused to put Metti on the fingers of the foot of the wife for the reasons best known to him.



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9. The cross examination (of R.W.1-wife) in this regard are as under:

“திருமணம் முடிந்த பின்னர் காலில் மிஞ்சி அணிவிக்கும் நிகழ்ச்சி நடைபெறும் என்றால் சரிதான். அதில் மிஞ்சி அணிவிக்கும் நிகழ்ச்சி நடைபெறும்போது கருத்து வேறுபாடு ஏற்பட்டது என்றால் சரிதான். யார் அந்த மிஞ்சியை வாங்கி வைத்திருக்க வேண்டும் என்பதில் தான் கருத்து வேறுபாடு ஏற்பட்டது. நாங்கள் வாங்கி வைத்திருக்க வேண்டுமென்று மனுதாரர் குடும்பத்தினர் கூறியதால் அந்த நடைமுறையை மனுதாரர் குடும்பத்தினர் தான் வாங்கி வைக்க வேண்டுமென்று நாங்கள் கூறியதால் அதன் தொடர்பாக பிரச்சனை எழுந்தது. மனுதாரருக்கான மெட்டியை நாங்கள் வாங்கி வைத்திருந்தோம். இதை முன்னதாக தெரிவித்திருந்த பின்னரும் எனக்குரிய மெட்டியை ஏன் எங்கள் குடும்பத்தினர் ஏன் வாங்கி வைக்கவில்லை என்று மனுதாரர் குடும்பத்தினரால் கருத்து வேறுபாடு ஏற்பட்டது என்றால் சரிதான். அந்த மெட்டியை நான் அணிந்து கொள்ளவில்லை என்றால் சரியல்ல. மணமகன் அணிவிக்கும் வழக்கம் இல்லை என்று கூறி மனுதாரரின் தாயார் அதை கழற்றி வீசிவிட்டார். மெட்டி அணிவித்த புகைப்படத்தை கூடுதல் மகளிர் நீதிமன்றத்தில் தாக்கல் செய்யப்பட்டுள்ளது என்றால் சரிதான். மனதாரர் குடும்பத்தின் மீதுள்ள கசப்பினால் அந்த மெட்டியை நான் அணிவதே இல்லை என்றால் சரியல்ல.
(emphasis supplied)



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10. Furthermore, with regard to the dispute of paternity of the child to the respondent / wife, though no pleading was raised, however, it appears that during the pendency of the Domestic Violence proceedings in M.C.No.27 of 2015, the child was subjected to DNA test and resulted in 99.99% in favour of the child. In this regard, the cross-examination of R.W.1 (wife) are relevant as under:

“நான் தாய்மை அடைந்த விசயத்தை மனுதாரர் குடும்பத்திற்கு தெரிவிக்கவே இல்லை என்றால் சரியல்ல. எந்த தேதியில் எப்போது மனுதாரர் குடும்பத்திற்கு தெரிவிக்கப்பட்டது என்ற விபரத்தை என்னுடைய அறிவிப்பிலும், மனுவிலும் எதிருரையிலும், முதல் விசாரணையிலும் கூறவில்லை என்றால் சரியல்ல. மரபணு பரிசோதனை அறிக்கையில் 99.9 சதவீதம் வாய்ப்புள்ளது என்றுதான் கூறப்பட்டுள்ளது என்றால் சரிதான். அந்த அறிக்கை வழங்கிய நிபுணரை விசாரித்தால் தெரியும்.
(emphasis supplied)

11. It is seen from the averments that the child born to the wife is within 260 days and on that score, the paternity was doubted by the husband resulted in conducting DNA test, during the pendency of the proceedings before the Family Court under the Domestic Violence Act.



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12. Child was born on 02.11.2014 after 8 months of completion of pregnancy. In support of the earlier contention that there was no physical relationship between the parties except on 01.03.2014, it was specifically denied by the wife during the cross-examination and also denied the allegation that pregnancy was not informed to the parents of husband and also duly denied by the parties. The fact remains that neither the petitioner nor his parents have visited the child till the trial, also assumes significance.

13. Thus, this Court finds that the marriage was solemnized between the parties on 13.02.2014 and Santhi Muhoortham (first night) was held on 13.02.2014. Though suggestion has been made Santhi Muhoortham was not completed in the sense that marriage was not consummated between the parties, it was denied. Between 13.02.2014 to 16.02.2014, both parties lived in the parents house of the husband and on 16.02.2014, reception was held at Trichy (arranged by the parents of the wife) and on 18th day both parties were stayed at Cumbam lower camp (Honey Moon) and on 21st day, left to Chennai.



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14(a). It is seen from the records that, from 25.03.2014 to 27.03.2014, both parties have left to Rameswaram. Till such time, there was no ill-feelings among the parties.

14(b). On 06.04.2014, the parents of the wife came to Chennai and took the wife along with them to Trichy. According to the wife, her parents decided to sell the ancestral property and for the purpose of registration, they went to the wife's parent's house. Further, she was not well and during illness of the wife at Chennai, the husband has not shown any interest for giving medical treatment and thereafter, the parties are living separately.

14(c). On 19.04.2014, the husband issued Ex.P3 legal notice and reply notice was given on 03.05.2014 and rejoinder was issued on 19.06.2014.

15. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in ***Shilpa Sailesh vs. Varun Sreenivasan*** reported in **2023 SAR (Civil) 654**, where the Hon'ble Supreme Court has held that irretrievable breakdown of marriage is a ground for divorce and also relied on the decision in ***Samar Ghosh vs. Jaya Ghosh*** reported in **(2007) 4 Supreme Court Cases 511**.



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16. The learned counsel for the respondent / wife made a submission in support of the judgment of the trial Court.

17. On the legal position in *Samar Ghosh's case* stated supra, the Hon'ble Supreme Court has held that no uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”.

18. In *Shilpa Sailesh vs. Varun Sreenivasan* reported in **2023 SAR (Civ) 654**, the Hon'ble Supreme Court in paragraph 42(iii), has held as under:

“42(iii) Whether this Court can grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts



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established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a Court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed.” (emphasis supplied)

19. As stated supra, the husband has come to the Court seeking dissolution of marriage on the ground of mental cruelty and 4 incidents have been pleaded in the plaint and also stated in the proof affidavit and two incidents have been projected during the cross-examination of the P.W.1, based upon the certain incident that have been taken place during the pendency of the Domestic Violence Act before the Additional Mahila Court at Trichy.

20. At the outset, the parties lived together for a period of 54 days. The marriage was solemnized on 13.02.2014 and the child was born on 02.11.2014 after completion of 8 months and the date of birth of the child is 260 days from the date of marriage, which is not disputed by both parties and the last incident that was alleged by the husband that on 06.04.2014, the wife left the matrimonial home along with her parents without



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assigning any reasons, following thereby, on 19.04.2014, the husband had issued a legal notice calling upon the wife whether she is willing to live with him or not. It gives an indication that the husband has decided his mind and he is waiting for opportunity to initiate the legal proceedings.

21(a). From the list of alleged acts cruelty as narrated supra, with regard to performance of marriage, certain procedures may vary from place to place and locality to locality. Had the parties have conducted the pre-marriage conversation with regard to the rituals to be performed between the parties, the same could have sorted out the difference and the allegations and counter allegations could not have arisen. [Except the evidence of P.W.1 and R.W.1, no other oral evidence is available before the Court].

21(b).The wife alleged that one day prior to the marriage, the parents of the husband came to the room and check the genuineness of the gold jewels and further on the date of marriage, with regard to the fixing of Metti on the bride's foot, there was some issue. Though no pleadings have been raised by the husband either in the petition or in the proof affidavit during the cross-examination. It was put to R.W.1 (wife) by way of



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suggestion and she had categorically stated as what had happened on that day and hence, in the absence of uncontradicted version of R.W.1 in the witness box, we find that the husband has made a 'mountain out of a molehill'.

22(a). Admittedly, both parties lived together for 54 days. According to P.W.1-husband, the wife side has not properly invited for the marriage reception hosted by the parent in-laws, whereas, the said allegations were denied by the wife and she has stated that her parents invited the husband's parents. Furthermore, there is an explanation by the wife that Rs.5001/- was demanded by the parents of the husband for attending the reception after satisfying the same only they came and attended the marriage reception. In this regard, the answer given by the wife was neither denied nor disputed by the husband assumes significance.

22(b). Another incident referred to by the husband is that one day prior to the marriage, betrothal function was arranged and on that day, the wife side people have not come till 07.30 p.m., and hence, there was a difference between the parties. On the other hand, the wife deposed that their family members attended the function in time and only there was a



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minor delay, which was blown out of proportion by the husband side also assumes significance. Considering the version of R.W.1, this Court finds that the husband is blowing tiny and trivial issues out of proportion, for the purpose of case.

23(a). The incidents that have been referred to by the husband are not sufficient and can never be termed as 'cruelty'. After going through the allegations in the pleadings as well as in the evidence, this Court finds that they are in nature of grievance and not a 'cruelty' as defined by the Hon'ble Supreme Court in ***Samar Ghosh vs. Jaya Ghosh's case***. Furthermore, the husband and wife lived together for 54 days and during the 54 days, they have been living smoothly and they have begotten a child on 02.11.2014.

23(b). Though it is stated by P.W.1 during the cross-examination that the birth of the child was not informed to the parents, and no such pleadings or averments are made in the proof affidavit filed by the husband which assumes significance. It is a categorical evidence of the wife that the pregnancy and delivery of the child has been duly informed to the husband side and hence, we find that it is only an afterthought to add extra colour for filing the case for dissolution of marriage.



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23(c).The husband has challenged the paternity of the child resulted in DNA test pending the Domestic Violence proceedings. The DNA test is in the nature of affirming paternity of the child 99.99%. The same was not filed by either of the parties before the Family Court. However, during the cross-examination of R.W.1 (wife) she has stated that she was also suggested that DNA test which is not the conclusive proof of the paternity of the child with respect to the petitioner/husband and hence, we find that the husband is looking for an opportunity to initiate legal proceedings, is strengthened by this fact.

23(d). As stated supra, when the wife left to the parental house on 06.04.2014 for the purpose of signing the sale deed in respect of ancestral property, within 16 days. Ex.P3 legal notice was issued on 19.04.2014 calling upon the wife to decide her future and suitable reply appears to have been sent under Ex.P4 on 03.05.2014 and rejoinder notice was issued under Ex.P5, dated 19.06.2014.

23(e).The case for judicial separation is filed before the Sub Court, in the year 2014 and thereafter, the present HMOP 404 of 2015 for



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dissolution of marriage filed before the Sub Court, Tambaram and subsequently, on 18.03.2015, as per the orders of the High Court, the same was transferred to the Family Court, Trichy and renumbered as H.M.O.P.No.217 of 2016. When the case was about to take up for trial, it appears that the husband filed I.A.No.2 of 2015 to include the allegations that a false case of Domestic Violence has been filed against the husband in M.C.No.27 of 2015 and same is included by way of amendment on 28.02.2020. A perusal of the order passed in M.C.No.27 of 2015 Ex.P9, we find that the wife has moved M.C.No.27 of 2015 on 11.02.2015 seeking protection order and restitution order for herself and the child and for compensation. On the technical ground, the same was rejected.

24. After perusal of the order passed in M.C.No.27 of 2015, we find that the said plea cannot be termed as a false plea for more than two grounds of the burden of proof and the standard of proof. This requirement for proving the charge under the Domestic Violence Act is different from standard proof required for Family Court proceedings.

25(a). Furthermore, the petitioner herein has come to the Court for dissolution of marriage alleging certain incidents as cruelty. It is, for him, to probablise the case, failing which, he has to fall.



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25(b). The learned Family Court Judge, Trichy, has rightly held that immediately after the wife left the matrimonial home, within 15 days, the husband has issued the notice calling upon the wife for taking future course of action and he has not taken any steps for restitution of conjugal rights and initially, he has filed a petition for judicial separation.

26. On consideration of oral evidence as discussed supra, this Court finds that for the 54 days, they are living together in a happy manner. It is not on the case of the husband that during the 54 days, she was not happy with him and she was treated the husband with cruelty. Furthermore, the husband has an audacity to the extent of saying the child was not born to him and this act demonstrated that the husband is acting like 'male chauvinist' and he wanted to dictate the terms to the wife.

26(b).The allegations that are being projected for cruelty are general in nature stemmed from self assumption. Between the husband and wife, wife cannot put to great hardship for tiny and trivial issues. From the evidence available, this Court found the wife has not committed any cruelty on the husband. On the other hand, it is husband appears to have



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committed more cruelty on wife and as well as indulged in character assassination.

26(c). The long separation between the parties as projected by the counsel to term the marriage as irretrievable break down of the marriage cannot be accepted for more than one ground. From the incident stated supra and the conduct of the husband in issuing Ex.P4 and after issuance of Ex.P6, he had instituted the judicial proceedings and continued to the judicial proceedings and not allowed the wife from restoring of conjugal rights. Furthermore, after the conclusion of the Domestic Violence Act on technical ground, he has amended the petition, as if, false criminal case projected by way of additional grounds for divorce and hence, I find that for the action and conduct of the husband, the wife was not in a position to reunite with the husband along with the children and the husband has not taken any steps for restitution of conjugal right and he has not taken any steps to bring the wife and child to the matrimonial home, he is not interested in a marital life and hence, it is by his own act, separation between the parties is continuous and he cannot be allowed to take advantage of his own action of wrong and hence, we find that the irretrievable break down of marriage as projected now is because of the act



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of the husband alone and hence, we find no reason to interfere with the order of the trial Judge.

26(d). The order of the Family Court Judge is well reasoned order and the trial Court had taken into consideration the answer elicited from P.W.1 and R.W.1(wife) and also assigned the reason for disbelieving the words of the P.W.1(husband) and also stated that the incidents referred to by the husband does not pass the test of cruelty and hence, has rightly rejected the petition and the same does not warrant any interference.

27. In fine,

(I) With regard to checking of genuinity of Gold Jewels of bride by parents of bridegroom on the day prior to marriage, whether amounts to cruelty by husband's side or bride, this Court is of the considered view, the same is not for judicial pronouncement, however, both parties to marriage is expected to be fair to each other and also to ensure that conscious level be reasonable and such action shall not breach line of self respect and civilisation.



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(ii) The allegation of 'Metti' on foot finger of bride by bridegroom and incidence there to, there cannot be uniformed and straight jacket formula, as the same relates to customs prevailing in their community and area of the parties concerned. Hence, as observed, earlier, had there been pre-negotiation and pre-marriage discussion such instance could not have arisen.

(iii) The plea of husband, that he need special invitation to attend marriage reception hoisted by bride's parents in their town and demanded 'special Sridhana of Rs.5,001/-' for attending the same, we find that it is 'too much' on the part of groom.

(iv) Complaint made by wife, for residential order under DV Act, was rejected on technical grounds cannot amount 'false criminal complaint' to fall within the ambit of cruelty as defined in Section 13(i)(ia) of Hindu Marriage Act.



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28. Accordingly, this Civil Miscellaneous Appeals is dismissed. No costs.

(T.K.R.J.) & (P.B.B.J)

.12.2023

Internet : Yes
Index : Yes/No
Neutral Citation: Yes/No

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To

1.The Family Court,
Trichirappalli.

2.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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**RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J**

am

judgment in

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