

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.118 of 2009

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DINESH KUMAR son of late Shiv Dayal Singh, R/O Village-Bihta, PS Imadpur, Distt-Bhojpur.

... .. Appellant/s

Versus

STATE OF BIHAR THRU.C.B.I.

... .. Respondent/s

=====

with

Criminal Appeal (SJ) No. 135 of 2009

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HEMCHANDRA JHA @ HEMCHANDRA CHOUDHARY son of late Jageshwar Choudhary R/O Village- Haripur, PS Bahera, Distt-Darbhanga.

... .. Appellant/s

Versus

STATE OF BIHAR THRU.C.B.I.

... .. Respondent/s

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Appearance :

(In Criminal Appeal (SJ) No. 118 of 2009)

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate

For the Respondent/s : Mr. Bipin Kr.Sinha (SC,CBI)

(In Criminal Appeal (SJ) No. 135 of 2009)

For the Appellant/s : Mr. Ajay Kumar Thakur,

Mr. Amir Alam,

Ms. Swati Sinha, Advocates.

For the Respondent/s : Mr. Bipin Kr.Sinha(SC,CBI)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

26-11-2018

Cr. Appeal No. 118/2009 wherein Dinesh Kumar

happens to be the appellant and Cr. Appeal No. 135/2009

wherein Hemchandra Jha @ Hemchandra Choudhary is the

appellant, by common judgment of conviction dated 04.02.2009

and order of sentence dated 10.02.2009 passed by Additional

Sessions Judge-VI, Patna in Sessions Trial No. 1163/2005

whereby and whereunder, appellants, Dinesh Singh,



Hemchandra Jha have been found guilty for an offence punishable under Sections 255, 259, IPC and sentenced to undergo RI for four years as well as to pay fine of Rs. 1000/- in default thereof, to undergo SI for six months additionally under each head respectively, appellant, Hemchandra Jha @ Hemchandra Choudhary has been further found guilty for an offence punishable under Sections 256, 257, and 467 IPC and sentenced to undergo RI for four years as well as to pay fine of Rs. 1000/- in default thereof, to undergo SI for six months additionally under each head, respectively, with a further direction to run the sentences concurrently, on account thereof, both the appeals have been heard together and are being disposed of by a common judgment.

2. Ramendra Pratap Pandey (PW-4) filed a written report before SP, CBI, SPE-Patna disclosing therein that one Dinesh Kumar @ Ganesh, son of Late Shiv Dayal Singh, Village-Bihta, PS-Imadpur, Distt-Bhojpur has been apprehended relating to RC Case No. 4(E)/2004-Kol and having a discloser at his end that forged Indian Non Judicial Stamps and Court Fee Stamps are being prepared/printed and supplied by Sh. Bashir Ahmad son of Md. Abdul Haquim, his brother Nasir Ahmad son of Abdul Haquim and Shahnawaz son of Bashir Ahmad



residents of Village-Bhadauni, PO & Distt- Nawadah, Bihar, presently residing in the premises of Janta Offset Printing Press, Mohammadpur Road, Near Shahganj Kabristan, Patna-6 and Sri Hemchandra Choudhary @ Hemc Choudhary son of late Jageshwar Choudhary resident of Vill+PO, Hiaripur, PS-Bahera, Distt-Darbhanga, presently residing at the house of Sri Ratnesh Mahto, Dharmendra Niketan, Sweet Heart Lane, Patna-6, he along with team of CBI officials raided the residential premise of Hemchandra Choudhary being under tenancy of Sri Ratnesh Mahto, Dharmendra Niketan, Sweet Heart Lane, Patna-6 as well as at Bharat Block, Ratnesh Lodge, Chak Musallapur, PS-Pirbahore, Patna and during search of the above premises following items were recovered:-

A. At the house of Sh. Ratnesh Mahto, Sri Ratnesh Mahto, Dharmendra Niketan, Sweet Heart Lane, Patna-6.

1. Indian non Judicial stamp papers (Rs. 5000X2 and Rs. 1000X2).
2. Court fee stamp for Rs. 20 x 40 Nos.
3. Court fee stamp for Rs. 5 x 200 Nos.

3. On interrogation Hemchandra Choudhary disclosed that he prepares the films for the forged stamps in his processing unit at Bharat Block, Ratnesh Lodge, Chak Musallapur, PS-



Pirbahore, Patna. On his discloser further seach was conducted at the said premise from where the following recoveries have been made.

At Bharat Block, Ratnesh Lodge, Chak Musallpur, PS-Pirbahore, Patna.

1. One blank NSC for Rs. 5000 bearing No. 14BC733089
2. 2 Sheets (one positive and one negative) of Rs. 5/- denomination, total 20 stamps.
3. Stamp paper (court fee) having one full embossed stamp and two half embossed stamps of Rs. 10/-
4. One positive for Rs. 5/- postal stamp.
5. One judicial Stamp paper (blank) for Rs. 750/-
6. One positive of 2nd Class Railway pass.

4. In the opinion of the informant, the aforesaid recoveries attract offences punishable under Section 120B, 255, 257, 258, 259, 260, 467, 469, 471 of the IPC and 12 and 13 of Stamp Act whereupon Patna CBI/ACB Case No. 14(S)/2004- was registered, investigated upon followed with submission of charge-sheet, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that CBI officials in order to screen the real culprit got the appellants



involved in this case. However, nothing has been adduced in defence.

6. Altogether eight Pws have been examined on behalf of prosecution who are PW-1, Braj Kishore Jha, PW-2, Rajesh Kumar, PW-3, Ramashish Choudhary, PW-4, R.P. Pandey, PW-5, Sapan Kumar, PW-6, Pushpendra Saxena, PW-7, Manish Shankar and PW-8, Subhash Kundu. Side by side has also exhibited Ext-1 to 1/8 are signatures, Ext-2, Register, Ext-2/1 to 2/6, Court Stamp, Ext-2/7 to 2/8, Judicial Stamp of Rs.1000/-, Ext-2/9 to 2/10, Judicial stamps of Rs. 500/-, Ext-3 voter identity card, Ext-4 and 4/1, negative, Ext-5, tampered stamp, Ext-6, Closed envelop, Ext-7, KVP amounting to Rs. 5000/-, Ext-8, Judicial stamp amounting to Rs. 750/-, Ext-9, Register, Ext-10, Arrest memo, Ext-11 to 11/1, stamp paper, Ext-12 to 12/1, Railway Tickets, Ext-13 to 13/1, Seizure list, Ext-14, search report, Ext-15, Formal FIR, Ext-16, short signature, S.K. Pandey, Ext-14 to 14/1, signature of S.Kumar. Material Ext-I is the Printed positive of Railway Monthly Pass. As stated above, nothing has been adduced on behalf of defence.

7. After hearing rival submissions as well as going through the record, it is evident that CBI officials suffer from a dilemma that whenever a case is instituted at their end and



investigated upon, there will not be any error. That means to say, full proof investigation is the bench mark of the CBI and that happens to be reason behind, irrespective of indulgence of CBI, the cases sometimes suffer from inherent defect giving no other option but to acquit the accused. From perusal of the record, it is evident that CBI officials have committed blunder during course of the investigation as well as during course of conduction of the prosecution before the court irrespective of the fact that the allegations whatever been alleged, happen to be serious one as it is bound to erode the financial, economical condition of the country by the accused forming a syndicate in pre-planned manner and so, the investigating officials were expected to investigate the case with due diligence. Having slothful activity at the end of the investigating officials, in the aforesaid background should be viewed fretfully, ant that being so, the negligent officials should be penalized to avoid future recurrence, and for that, the office is directed to transmit a copy of the judgment to the CBI high ups.

8. From the contents of the written report whatsoever been incorporated at the end of PW-4, though at the trial stage having some exposure did not disclose that anything was recovered from the possession of appellant, Dinesh Kumar. It



simply denotes that appellant Dinesh Kumar was apprehended relating to RC. 4(E)/2004-Kol. The FIR of the aforesaid case is not on the record enabling the court to see whether the aforesaid case was registered relating to the same kind of offence or not. Furthermore, the arrest memo which happens to be Ext-10 contains the Case No. RC-14(S) 2004/Patna. That means to say, there happens to be inconsistency right from inception of the case whether appellant, Dinesh was apprehended relating to RC Case No. 4(E)2004/Kol or relating to new case which happens to be the present one bearing RC-14(S) 2004/Patna. It has got a purpose. It is evident that subsequently, though the written report as disclosed above is completely silent, no seizure list has been prepared in accordance with Section 100 of the CrPC however, the arrest memo prepared in accordance with Section 41(B) of the CrPC, happens to be in a format having 12 columns contrary to the same and column no.5 discloses (articles found from the possession of accused at the time of arrest during his personal search) whereunder 5 items have been shown to be recovered from his possession including that of two Indian Non Judicial stamp papers of Rs. 1000/- which happens to be fake, having signature of appellant Dinesh Kumar at Column No. 10. That means to say, before arrest of appellant, Dinesh Kumar, the



written report was filed and then thereafter, arrest memo was prepared, otherwise, the written report certainly contained the fact with regard to recovery, that too, outside the avenue of RC Case No.4(E)2004/Kol.

9. The same is found ineradicable one when the relevant Pws are taken together. PW-4 is the informant. He has not disclosed during his examination-in-chief that he had apprehended Dinesh Kumar nor there happens to be discloser at his end that anything was recovered from his possession. He has not disclosed that Dinesh had made inculpatory extra judicial confessional statement whereupon locations of another appellant Hemchandra Choudhary was searched out, nor recovery at his instance.

10. PW-6 is another CBI official who has not claimed himself to be the arresting authority, more particularly, relating to appellant Dinesh but, he had deposed that Dinesh was arrested near Nalanda Medical College in connection with case no. 4(E)2004 POW-Kol whereupon, he was interrogated, searched out and during course thereof, two non judicial stamp papers of denomination of Rs. 1000/- were seized. He had also disclosed that Bashir Ahmad, Nasir Ahmad, Shahnawaz and Hemchandra Choudhary are engaged in printing fake stamps as



well as selling the same. Accordingly, a raid was conducted at the Janta Offset Printing Press of Bashir Ahmad as well as house of Hemchandra Choudhary. He was one of the members of the raiding party. Dinesh was arrested in his presence and for that, he had prepared arrest memo (Ext-10). He had also exhibited two fake non judicial stamps (Ext-11, 11/1), rest evidence will be taken up at the stage of discussing case of appellant, Hemchandra Choudhary. This witness has not disclosed that Dinesh was searched at in presence of any independent witness and for that, search-cum-seizure list was prepared. This witness has not stated that inculpatory extra judicial confessional statement of Dinesh was recorded or not. He also failed to disclose that raid was conducted at the place shown by Dinesh, recovery was made at the instant of Dinesh.

11. PW-8 is the I.O.. He has stated that investigation of RC Case No. 14A/04 was entrusted to him on 27.02.2004. He has further stated that during course of investigation, forged stamps, forged papers, forged court-fee stamps, forged railway pass relating to RC Case No.4E/2004 POW/Kol were seized. All the aforesaid materials were seized from the house, shop of Hemchandra Choudhary. Two non judicial stamps of denomination of Rs. 1000/- was recovered from the possession



of accused Dinesh, arrest memo was prepared relating to Dinesh at the time of arrest. In para-9, he has stated that he has prepared arrest memo of Dinesh. He has further stated that Dinesh was searched by him. In para-10, he has stated that he is not remembering at the present moment the exact location where Dinesh was arrested, searched out. He has further stated that at the time of arrest of Dinesh, so many locals have assembled but, they have not been made a witness of search and seizure as they were accompanying them since before. In para-12, he has stated that he had not taken signature of Dinesh over the documents recovered from the possession of Dinesh but, he had procured signature of Dinesh over the seizure list.

12. PW-3 is an employee of BSNL whose service has been procured by the CBI officials. He has stated that he had accompanied the CBI officials near Nalanda Medical College where CBI officials have arrested Dinesh and on search, one mobile, two stamp papers, two railway tickets were recovered and seized. At that very time, Suraj Rai was driving the vehicle. After arrest of Dinesh as well as with regard to recovery from his possession, memo was prepared over which, he along with Suraj had put their signature (Exhibited). Stamp was also exhibited. During cross-examination at para-3, he has stated that



he had put his signature as per instruction of CBI official at CBI office.

13. Now coming to Hemchandra Choudhary, there happens to be specific disclosure that on an inculpatory extra judicial confessional statement of Dinesh, his places were raided and there happens to be recovery and for that, search-cum-seizure list (Ext-13 Series) have been prepared, exhibited. From the record, it is evident that there happens to be no written inculpatory extra judicial confessional statement of Dinesh. From Ext-13, 13/1, it is evident that Dinesh has got no presence over the same. That means to say, whatever been at the end of the prosecution, that happens to be an oral inculpatory extra judicial confessional statement at the end of Dinesh leading to raid at the place of Hemchandra Choudhary followed with recovery of the items as per seizure list. Now, its reliability is to be seen.

14. PW-1 and PW-2 are railway officials who stood as seizure list witnesses. PW-1 has stated that he along with CBI officials have gone to the house of Ratnesh Mahto situated at Sweet Heart Lane, Kadamkuan where Hemchandra Choudhary was residing. House of Hemchandra Choudhary was searched and during course thereof, two judicial stamps of denomination



of Rs. 1000/-, two of Rs. 5000/-, courtfee stamps of Rs. 20/- forty in number, small ledger book and other documents were recovered and for that, search-cum-seizure list was prepared by the CBI officials in his presence over which, he along with PW-2 had put his signature (for one original and for another carbon copy), identified. He has further stated that the raid was conducted right from 1.15 AM to 2.15 AM. He has further stated that he was taken away by the CBI official from his office. Nothing has been recovered from the possession of Dinesh in his presence. In para-8, he has stated that during course of conduction of raid so many persons have assembled but he is unable to say their names. CBI officials have not taken signatures of those persons. He has further stated that after inspecting first building, they had gone to second building also. He has further stated that when they reached at the first building the room was closed, there was lock, after breaking the lock, room was searched. Then there happens to be cross-examination with regard to second place of occurrence whereunder he has stated at para-10 that so many persons have come but he is unable to disclose their identity. Then has stated that he is not remembering whether accused was present or not. On court's question, he has stated that the accused was apprehended



therefrom. Then he has been challenged over the factum of search and seizure.

15. PW-2 is the another search-cum-seizure list witness. During examination-in-chief, he has reiterated the activity having at the end of CBI officials during course of conduction of raid, search and seizure with regard to concerned articles (detailed) at two different places. For that, search-cum-seizure list was prepared whereupon he along with PW-1 had put their signature (Exhibited). During cross-examination, he has stated that none came during course of search and seizure at both the places nor the CBI official called. Landlord as well as his family members were also not present. Hemchandra Choudhary was present at the place of Ratnesh Mahto but he is unable to say whether signature of Hemchandra Choudhary was taken over seizure list or not. He is unable to disclose boundary of the alleged PO. They had gone to the place of Ratnesh Mahto at about 2.45 AM and then visited at the lodge at 3.45 AM.

16. PW-4 the informant, during course of examination-in-chief has stated that on the alleged date he along with other police officials conducted raid of the house occupied by Hemchandra belonging to Ratnesh Mahto, Dharmendra Niketan, Sweet Heart Lane, Patna-6 and from there the articles



as detailed were seized. Then thereafter, they had gone to Bharat Block located at Ratnesh Lodge lying at Village-Chak Musallapur, PS-Pirbahore, Patna and searched room occupied by Hemchandra and recovered the items as listed therein. Seizure list was prepared accordingly, (exhibited) having signature of the witnesses including that of Ratnesh Mahto. Birendra Kumar Chodhary who happens to be relative of Hemchandra Choudhary. Accordingly, exhibited the same. During cross-examination, he has stated that search and seizure was in accordance with Section 165 CrPC. He has further stated that a copy of notice was served upon the accused but, the another copy has not been placed on the record. In para-7, he has admitted that local persons were not allowed to become search-cum-seizure list witness.

17. PW-6 has stated that on the inculpatory extra judicial confessional statement of Dinesh wherein he had disclosed that Bashir, Nasir, Shahnawaz and Hemchandra were engaged in printing fake Indian Judicial Stamp, non-judicial stamp and were engaged in sale. First of all, Janta Offset Printing Press belonging to Bashir Ahmad was raided and then, raid at the house of Hemchandra was also made. He was one of the members of raiding party. Then there happens to be discloser



concerning Dinesh. He has also stated that Subhash Kundu, B.K. Singh, R.P. Pandey, R.K. Gupta along with two other independent witnesses were members of raiding party while going to raid at the house of Hemchandra. He has further stated at para-3 that Hemchandra was residing at the house of Ratnesh Mahto at Muhalla- Musallahpur. On search, the items so incorporated therein were seized and for that seizure list was prepared over which, he had also put his signature. Witnesses have also put their signatures. He has also stated that a copy of seizure list was handed over to the accused who put his signature in token thereof. He has further stated that on a discloser made by Hemchandra, they had conducted raid at Bharat Block located at Ratnesh Lodge lying at Village-Chak Musallapur, PS-Pirbahore, Patna away from the house of Hemchandra and in his presence, at his pointing out the items so incorporated therein were seized therefrom, for that, search-cum-seizure list was prepared whereupon, he along with other witnesses have put their signature. Copy of the seizure list was handed over to the accused and in token thereof, the accused had also put his signature. Identified the same. During cross-examination, he has stated that none of the persons of the surroundings were called upon nor the landlord was informed



with regard to conduction of the raid. They have searched out simply the room of Hemchandra. Seizure list was prepared at that very place.

18. PW-8 is the I.O., one of the members of the raiding party. As stated above, he in para-1 of his examination-in-chief has categorically stated that during course of investigation forged stamps, forged papers, forged court-fee stamps, forged railway pass relating to RC Case No. 4(E)/2004 /Kol was recovered during course of search. He has further stated that the aforesaid materials were recovered from the house of Hemchandra as well as from his shop. While two stamp papers were recovered from the possession of Dinesh. He has further stated that search-cum-seizure list was prepared relating to recovery having from the house, shop of Hemchandra and list he had put his signature over the seizure list (exhibited). He has further stated that recovered articles were sent for expert opinion and were reported to be fake and forged. After examining the witnesses, collecting relevant reports, found the case true whereupon submitted charge-sheet. During cross-examination, he has stated at para-8 that presence of witnesses were procured from the railway station on requisition. In para-14, he has stated that there happens to be discloser in the written



report filed by R.P. Pandey that on the discloser made by Dinesh, name of accused Hemchandra Jha transpired. He has further stated at para-15, that during course of investigation of RC Case No. 4(E)/2004/Kol, R.P. Pandey got information with regard to Dinesh but, he had not incorporated those things in the case diary. In para-16, he has stated that he had recorded statement of Ratnesh Mahto, one of the landlord. In para-17, he has further stated that no signature of Hemchandra has been obtained over respective seizure list. He is unable to disclose names of persons of the boundary as well as failed to examine them. In para-19, he has stated that he had not opined to proceed in order to trace out from which branch of post office blank NSC was issued but he had found the same to be genuine. Then he was recalled to correct the date of occurrence, as he categorically stated during examination-in-chief.

19. PW-5 is the railway official who had shown the railway MST to be fake while PW-7 is the expert who had examined the documents and found to be fake.

20. After going through the evidences as detailed hereinabove, it is evident that there happens to be inconsistency amongst the Pws over manner of arrest of appellant, Dinesh Kumar @ Ghanesh and in likewise manner, the prosecution case



against him relating to possession, recovery of two fake non judicial stamps from his possession. It is evident that no search cum seizure list was prepared in accordance with Section 100 of the CrPC nor a copy thereof, was served upon him. The arrest memo, though is in printed form having so many columns would not serve the purpose as there is distinction in between, as search and seizure list has to be carried out in accordance with Section 100 CrPC while later in accordance with Section 41(B) of the CrPC., which did not authorize creation of the format (Ext-10). Furthermore, it is evident that prosecution witnesses are not at all consistent over arrest, recovery as well as inculpatory confessional statement of Dinesh. It is further evident that save and except (Ext-10) arrest memo, appellant Dinesh has got no presence over any document nor there happens to be discloser that on pointing out of Dinesh, place of Hemchandra was searched out.

21. Now coming to the case of Hemchandra Jha @ Hemchandra Choudhary, the chapter begins with the discloser having at the end of Dinesh Kumar by way inculpatory extra-judicial confessional statement but the same found to be suspicious, as none of the Pws have stated that at the pointing out of Dinesh, the room was located, it was opened, search was



carried out, items including the fake judicial/non judicial stamps , court-fee etc, were recovered and at least, there would have been presence of Dinesh over the seizure list in order to certify that on the discloser made by Dinesh, recovery was made, being admissible in accordance with Section 27 of the Evidence Act. Not only this, there also happens to be inconsistency amongst the witnesses. Witnesses have categorically admitted that Hemchandra was arrested at the spot but, the reason best known to the prosecution neither his presence has been procured over the seizure list nor they have served copy of the seizure list upon him which, the I.O. (PW-8) one of the members of the raiding party had admitted though, controverted by PW-6, another member of the raiding party who had admitted presence of appellant, Hemchandra Jha over search-cum-seizure list as well as handing over a copy thereof to him. PW-6 had smashed the prosecution case by stating that the Printing Press of Bashir Ahmad, raid was conducted, contradicted by informant PW-4 as well as PW-8, I.O. along with two seizure list witnesses, PW-1 and PW-2.

22. The most surprising feature is that apart from the discloser having in the written report regarding presence of Bashir Ahmad, his brother, Nasir Ahmad and Shahnawaz, apart



from Hemchandra Choudhary to be engaged in the said affair but, column no.7 of the formal FIR did not contain their names nor charge-sheet discloses an event against them nay it has been disclosed by the I.O. that investigation was kept pending against them.

23. The other surprising feature exposes the dubious conduct of the prosecution by way of keeping concealed the fact of Case No. 4(E)/2004/Kol , when the informant PW-4 was the I.O. of the Case although, PW-8, the I.O. divulged the same. The prosecution has not produced document, more particularly, the FIR relating to that RC Case No. 4 (E)/2004/Kol in order to apprise the court whether registration of aforesaid case was for the same illegal activity or otherwise than that. Had there been the same kind of allegation, then in that event, recovery of forged documents would have been in continuation of the investigation and that being so, would have been the subject matter of RC Case No. 4 (E)/2004/Kol and for that, registration of separate case would be allowed. Had there been allegation otherwise than the present one, that means to say, with regard to printing, possession, sale etc of the fake stamps, then in that event, there would have been the justification of registration of the present case.



24. At the present juncture, the Standing Counsel, CBI has submitted that irrespective of nature of oral evidence, infirmity amongst them, inconsistency so prevailing, the circumstance visualizing from the record did justify the finding recorded by the learned lower court. To substantiate the same, it has been submitted that none of the appellants has denied their apprehension at the end of CBI. Whether they were remanded in RC Case No. 4 (E)/2004/Kol, has not been affirmed at their end, search-cum-seizure list has not been controverted. So, in the background of Section 165, 166 (3) of the CrPC, the event of search and seizure happens to be admissible in the eye of law and further when it is admissible, it has to be admitted and once it is admitted recovery of fake non-judicial, judicial stamp, court-fee stamp, is found duly substantiated.

25. Learned counsel representing the appellants has submitted that application of Section 166(3) CrPC would come into play only having search and seizure duly substantiated in accordance with law. Once, the search and seizure is found suspicious one, then in that event, the presumption in terms of Section 166 (3) CrPC would not be available to the prosecution.

26. Giving analytical thought to the over the materials prevailing on the record, it is found and held that the



prosecution has miserably failed to substantiate its case beyond the reasonable doubt whereupon, the judgment impugned is set aside.

27. Both the appeals are allowed. Since both the appellants are on bail, they are discharged from the liability of the bail bond.

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(Aditya Kumar Trivedi, J)

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