



Crl.R.C(MD)No.194 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 28.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.R.C(MD)No.194 of 2019

K. Malairaj

... Petitioner

Vs

The Inspector of Police,
Erwardi Dharge Police Station,
Ramanathapuram District.

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the judgment in C.A.No.15 of 2018, on the file of Principal District and Sessions Court, Ramanathapuram, dated 06.09.2018 in S.C.No.20 of 2014, on the file of Assistant Sessions Judge/Chief Judicial Magistrate Court, Ramanathapuram, dated 28.11.2018 in Cr.No.92 of 2008, on the file of the respondent Police Station and set aside the same.

For Petitioner : Mr. I.Pinaygash

For Respondent : Mr.M.Sakthikumar
Government Advocate



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ORDER

This Criminal Revision Petition has been filed to set aside the Judgment in C.A.No.15 of 2018, on the file of Principal District and Sessions Court, Ramanathapuram, dated 06.09.2018 confirming the Judgment passed in S.C.No.20 of 2014, on the file of Assistant Sessions Judge/Chief Judicial Magistrate Court, Ramanathapuram, dated 28.11.2018.

2.The prosecution case is that due to enmity between first accused and the de facto complainant, A1 engaged A2 to A4 to kill the defacto complainant. On 24.03.2008, A1 along with other accused entered into a conspiracy to murder the defacto complainant by pouring acid and the first accused agreed to pay Rs.10,000/- to A2 and A4 and thereby A1 paid a sum of Rs.5,000/- to A2 to A4 as advance. In pursuance to the conspiracy, A2 and A3 on 25.03.2008, at about 10 p.m., came to the office of the defacto complainant in a motor cycle bearing registration No.TN 39 AL 7558. When A2 and A3 were taking about the business, A1 suddenly came there and plucked a bottle from A3 and poured the acid and thereby the victim/defacto complainant sustained injuries and then the victim was taken to hospital and Police



obtained a complaint, Ex.P.1 from the victim. Based on the complaint, statement of victim, PW10 has registered FIR, Ex.P.10 and then the case was investigated by PW12 and further investigation was done by PW13 and they filed final report. Thereafter, the records relied on by the prosecution were furnished to the accused under Section 207 Cr.P.C and then the case was committed to Principal District Court, Ramnad and the case was made over to Assistant Sessions Court/Chief Judicial Magistrate Court, Ramnad. The Chief Judicial Magistrate Court, Ramnad has framed the charges under Sections 326, 307, 120(B) of IPC as against A1 and A3, charges under Section 326 r/w 34, 307 r/w 34, 120(B) IPC were framed as against A2. The charges were read over and explained to the accused and they denied the charges and then the trial Court examined the witnesses PW1 to PW13 and marked Ex.P.1 to Ex.P.19 and M.O.1 to M.O.5. After completion of prosecution witnesses, the accused were examined under Section 313(1)(b) of Cr.P.C with regard to the incriminating evidences as against the accused and they denied the same. After analysing the evidence adduced on either side, the trial Court has found guilty.

3.The trial Court in S.C.No.20 of 2014 the petitioner was



convicted under Section 326 IPC and imposed a punishment of rigorous imprisonment for a period of one year and to pay a fine of Rs.25,000/- and in default, to undergo SI for 3 months. However, the petitioner was acquitted for the offence under section 120(B), 307, 34 of I.P.C. The other accused were also acquitted from all the charges levelled against them. Aggrieved by the said Judgment, the first accused has preferred an appeal before the Principal District and Sessions Court, Ramanathapuram in Crl.A. No.15 of 2018 and the same was also dismissed by the appellate Court, confirming the Judgment, dated 06.09.2018. Aggrieved by the said Judgment passed by the learned Principal District and Sessions Judge, Ramanathapuram, the petitioner has preferred the present revision before this Court on the following grounds:

- *That the Judgments of the Principal District and Sessions Court and the Assistant Sessions Judge/Chief Judicial Magistrate Court, Ramanathapuram are against law, weight of evidence and probabilities of the case.*
- *That to attract the offence of Grievous Hurt as contemplated U/s. 320 of I.P.C and its ingredient mentioned there in should have been established. In the present case none of the ingredients are made out to establish that the injured sustained grievous hurt and much less than the*



certificate of Doctor/ P.W.6.

- *Except the wound certificate, no materials including (Case Sheet, and X Ray Report) are submitted to substantiate the charge U/s. 326 of IPC against the Petitioner/Accused No. 1. Hence it is liable to be set aside at once.*
- *According to the prosecution case and deposition of P.W.2, the M.O.4 and 5 viz., Boost bottle and Carry Bag are kept in the occurrence place only. And based on that, they arrested the Appellant. Per contra the P.W.7 who is the witness for recovery who categorically stated that the M.O.4 and M.O.5 were recovered only from the house of the Appellant. Hence the arrest and confession and recovery is nothing but stage managed one.*
- *That the prosecution has utterly failed to send the M.O.4 to the chemical analysis lab as to show that the M.O.4 contains the Acid Content. But the very vital point is not at all considered by Courts below.*
- *That the statement of the Defacto Complainant is absolutely per contra between the FIR and the deposition of P.W.1. As per the FIR the Complainant stated that only 2 unnamed Accused were involved in the case and the Appellant is not arrayed as Accused. But as per the P.W.1 deposition there*



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are 4 persons were shown as accused including the appellant. Hence the Judgment is liable to be quashed at once.

4.1.The learned counsel for the petitioner would contend that the petitioner/A1 and two others have faced the charges for the offence under sections 326, 307 read with 34 and 120(B) of IPC. The trial Court has acquitted A2 and A3 from all the charges and also acquitted the first accused from the charges under section 120(B), 307, 34 of I.P.C and convicted the petitioner under section 326 of IPC. As per the complaint given by the defacto complainant, there is no reference about the name of the petitioner. It is stated that only two persons went to the place of occurrence and among them, one person poured the acid on the defacto complainant, thereafter, he went to hospital. The petitioner has been added as an accused and section of law was also altered since that the petitioner has engaged other two accused, due to illegal relationship between the defacto complainant and petitioner's wife. Therefore, according to the prosecution case, the second and third accused have committed the offence.



4.2.The evidence of PW1 is totally contrary to the prosecution case. PW1 deposed in his evidence that two persons came to his shop and the first accused was standing outside and suddenly came to the place of occurrence and picked up the bottle from one of the accused standing there and poured the acid on him. Therefore there are major discrepancies between the evidence of PW1 and the complaint. Further, as per the prosecution case, the Sub Inspector of police has deposed that after registration of FIR, he went to the place of occurrence and seized the acid bottle, which was used in the occurrence. But the Investigation Officer, PW13, in his evidence has stated that based on the confession statement given by the first accused, he went to the house of A1, where he handed over the acid bottle, which was used in the occurrence. Two bottles were recovered from two different places from two different persons. Therefore, the prosecution case is highly doubtful and the said discrepancy, which affects the case of prosecution is not considered by the lower Courts.

4.3.Further, PW1 in his cross-examination admitted that only two persons were entered into the shop and he did not mention the name of those persons in the complaint. But his evidence is totally contrary to the complaint



given by him. Further, he admitted that while he was examined by the Doctor, he did not mention that Malairaj/petitioner had only poured the acid on him. Further, he admitted that two persons only came in the motorcycle and they were entered into the shop of the defacto complainant and he did not know the second and third accused prior to the date of occurrence. These are all the major discrepancies which were not considered by the Courts below. Therefore, the conviction and Judgment passed by the trial Court and confirmed by the appellate Court, are liable to be set aside.

5.The learned Government Advocate appearing for the respondent would contend that on the date of occurrence, the second and third accused entered into the shop of the defacto complainant and poured the acid on the defacto complainant, thereby, the defacto complainant sustained injury and went to hospital. There was enmity between the first accused and the defacto complainant, with regard to the illegal intimacy between the first accused's wife and the defacto complainant. Thus, the occurrence was happened and the acid bottles were recovered and trial Court has correctly convicted the first accused for the offence under section 326 IPC. The Doctor, had categorically deposed about the grievous injuries sustained by the victim.



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The trial Court has rightly acquitted the second and third accused and convicted the first accused only for the offence under section 326IPC.

Therefore, there is no infirmity in the Judgments passed by the Courts below.

Hence the Criminal Revision Petition is liable to be dismissed.

6.Heard both side arguments and perused the Judgments of Courts below and the grounds.

7.Now the point of consideration is that whether the Judgment passed in Crl.A.No.15 of 2018, on the file of the learned Principal District & Sessions Judge, Ramanathapuram, confirming the Judgment and conviction passed by the trial Court in S.C.No. 20 of 2014, is sustainable in law and facts?

8.As per the prosecution case, on 24.03.2018, due to enmity between first accused and the de facto complainant, with regard to illicit intimacy, all the accused persons had entered into a conspiracy to commit the murder of the defacto complainant and for that, the first accused has agreed to pay Rs.10,000/- and paid Rs.5,000/- as advance. In order to execute the



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conspiracy, on 25.03.2008, at about 10 p.m., the first, second and third accused came in a two wheeler bearing registration No.TN 39 AL 7558 and went to the shop of the defacto complainant with acid in the bottle. At that time, the first accused suddenly took up the bottle from the third accused and poured the acid on the victim, by saying that

□நீ தானே என் வாழ்க்கையை கெடுத்தவன். உன்னை

வாழவிடமாட்டேன்டா, இத்தோடு செத்து தொலைடா□

Due to that incident, the victim had sustained injuries on his body. Thereafter, he went to hospital and gave a complaint before the respondent police.

9. Based on the complaint, the respondent police has investigated the case and filed final report as against all the accused persons under section 326, 307 read with 34 and 120(B) IPC. Thereafter the case has been committed to Principal Sessions Court and it was made over to the Chief Judicial Magistrate Court in S.C.No.20 of 2014.

10. The trial Court has framed charges as against the first accused under section 326, 307, 120(B) IPC, as against the second accused under section 326 r/w 34, 307 r/w 34, 120(B) and as against the third accused under



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Section 326, 307, 120(B) IPC. According to prosecution case the accused conspired to commit murder of PW1, while so, charges would be for 120(B) r/w 302 IPC, since the conspiracy is distinct offence, but no charge under Section 120(B)/302 IPC was framed by the trial Court.

11.The main contention of the revision petitioner is that the respondent police has registered a case as against two accused persons alleging that they poured acid on 25.03.2018 against the victim. Subsequently, the respondent has filed the chargesheet against the petitioner and three others. On perusal of a complaint- Ex.P1 reveals that there is no reference about the name of petitioner and FIR was registered only against two unknown persons and this petitioner's name has been included only during the course of investigation.

12.According to the prosecution, the motive for the occurrence is that the first accused assumed that there is an illegal intimacy between the his wife and the defacto complainant. While so, the defacto complainant is very well known about the identity of the petitioner and PW1 during the course of examination admitted that he know the petitioner and he had business



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transaction with him. While so, there is no reference about the name of petitioner in the FIR. Further in the FIR, it is stated that

□அப்போது ஒரு கருப்பு மோட்டார் சைக்கிளில் பேண்ட் போட்ட இரண்டு பேர்கள் வந்து என் கடை முன்பு வண்டியை நிறுத்தினார்கள். மோட்டார் சைக்கிளை ஓட்டி வந்தவன் சிவப்பு நிற டீ சர்ட் போட்டிருந்தான். பின்னால் உட்கார்ந்து வந்த வெள்ளை நிற சட்டை போட்டிருந்த கையில் ஒரு பூஸ்ட் பாட்டிலுடன் இறங்கி, கடையில் இருந்த என்னிடம் வந்தான். இருவருக்கும் வயது சுமார் 25க்குள் இருக்கும்□

Therefore, from the complaint, it reveals that two persons aged about 25 years came in a black colour motorcycle and one, who worn white shirt had a Boost Bottle and he has opened the bottle and poured acid. There is no whisper about the presence of first accused in the FIR.

13.According to the evidence of PW1, two persons came to his shop and at that time, first accused sitting on the outside of teashop near the platform. The third accused asked the defacto complainant to take thinner. At that time, the third accused has a boost bottle in his hand. Immediately,



the first accused entered into the shop and picked the bottle from the third accused and poured the acid on the victim. This version has not been found in the FIR and this creates serious doubt about the evidence of the prosecution case. When the first accused is very well known to the defacto complainant, the name of the first accused must found place in the complaint and FIR. Further, according to the defacto complainant, after the occurrence, the first accused ran away from the scene of occurrence, by leaving the bottle and the two other accused went through in their motor cycle. This version was subsequently developed after the registration of FIR and there was no reference in the complaint given by PW1.

14.Further, PW1 has admitted that two and three accused are unknown persons and admitted in his cross-examination that he did not say about the name of first accused, while he was admitted in the hospital. Therefore, from the evidence of PW1, it is clear that the first accused was not present in the scene of crime on the day of occurrence. Further, at the time of examination, PW1 has denied that he did not say about the persons, who came to his shop and found one person was having acid in the boost bottle. But in the complaint he has stated that two persons came to his shop and poured acid



through boost bottle. Therefore, the evidence of PW1 is highly doubtful and does not inspire confidence to this Court.

15.The other contentions raised by the petitioner is that when the trial Court by giving benefit of doubts to the other accused and acquitted them, the same benefit of doubts also to be extended to the petitioner. As per the prosecution case, all the accused persons involved in the occurrence and the petitioner name was not found place in the FIR and complaint. While so, other accused were acquitted by giving benefit of doubts. Hence, the trial Court ought to have extended the same benefits of doubts to the petitioner also.

16.Further, it is contended that according to the prosecution case, boost bottle was used for storing the acid and according to PW1, after pouring acid the first accused left the bottle in the place of occurrence and ran away, the P.W.10 also in his evidence stated that he only registered the FIR and sent the victim to the hospital. Then he came to the place of occurrence and prepared the observation mahazar and rough sketch and he specifically stated that he seized the empty boost bottle, which was used for storing acid. But



the investigation officer, who was examined as P.W.13 has stated that based on the confession statement given by the first accused, on 25.03.2018 at about 6:15 AM, they went to Chinnaervadi and the first accused handed over the Horlicks bottle from his bathroom and the same was seized through Seizure Mahazar and the Horlicks bottle was marked as M.O.4. Therefore, the manner in which, the investigation done by the investigation officer and the evidence of prosecution witnesses are create serious doubts about the prosecution case. In this case as per prosecution two different bottles were recovered from two different places through two different persons. It is very unfortunate and the investigation done by the prosecution is not appreciable. Therefore, the evidence of prosecution witnesses are not sufficient to prove the case and it is unsafe to convict the petitioner and the trial Court has failed to consider the above said aspects.

17.The trial Court in the Judgment discussed about the recovery of Boost bottle in the place of occurrence and also discussed about the recovery of Horlicks bottle, based on the confession statement of accused and failed to note as to how two bottles on two difference place were seized, when one bottle alone involved in the case. The bottle M.O.1 and the cap of boost



bottle M.O.3 were recovered in the place of occurrence, the M.O.4 Horlicks bottle was recovered at the house of A1. How it is possible to recover two types of bottles for the single occurrence. As per the prosecution the acid bottle used only in the place of occurrence, while so, how the Investigating officer seized two bottles has to be explained by the prosecution witnesses. Without considering the said grave error, the trial Court convicted the accused. Further the trial Court has failed to discuss about the contradiction between FIR and the evidence of PW1 with regard to the presence of A1. The appellate Court also failed to consider the said aspects and sympathetically written the Judgment without appreciating the evidence in a proper manner.

18.The learned counsel appearing for the accused relied on the following judgments:

1. Gurusamy Vs State through the Sub Inspector of Police, Senthamaran Police Station, Tirunelveli District, reported in 2018(1)TNLJ 199 (Criminal).

“8.In this case, PW1 is the complainant. PW1 turned hostile and did not support the case of the prosecution. PW2 to PW7 are the eye witnesses to the occurrence. PW1, even though turned hostile, stated in his evidence that the offending vehicle dashed against the tea shop and in the accident, PW2 to PW7 sustained injuries. PW2 to PW7 have



stated during their evidence that the accident had occurred due to rash and negligent driving of the accused. The Doctor, who gave treatment to the injured persons was examined as PW10. PW10 stated during his evidence that some persons sustained simple injury and some sustained grievous injuries. PW10 categorically stated that for all the injuries sustained by the injured, X-ray was taken. But neither the X-ray, nor the X-ray report was produced. Hence, the injury sustained by the injured persons are treated as simple in nature”.

2. Gopal @ Gopalakrishnan Vs State, Rep. by the Inspector of Police, Lalgudi Police Station, reported in 2017(4)MLJ 746.

“7.M.O.1 / aruval was identified and marked through P.W.1 in this case. P.W.8 has not stated during his evidence that blood strained aruval and shirt were recovered by the police from the accused. Similarly, P.W.11 / Investigating Officer also has not stated that blood strained aruval was recovered. Hence, the contents of the seizure Mahazar were not proved by P.Ws.9 & 11 respectively in their evidence. P.W.2 / injured has not identified M.O.1 aruval, which is said to be used by the accused during the occurrence. M.O.1 was also not shown to P.W.10 / Doctor during his evidence. Hence, the recovery of blood strained weapons and shirt (M.Os.1 & 2) is not proved by the prosecution, as contended by the learned counsel for the appellant. Ex.P9 / admitted portion of the confession of the accused marked through P.W.11 lead to recovery of material objects, is inadmissible.

8.The trial Court relied on the medical evidence and convicted the accused for the offence punishable under [Section 326](#) IPC., instead of the charge framed under [Section 307](#) of IPC. X-rays taken for showing the bone fracture, as stated by P.W.10, have not been produced and no



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reason is assigned for non-production of x-rays of P.W.2 during evidence by prosecution. There are certain contradiction in respect of injuries sustained by P.W.2 in the occurrence between ocular evidence of P.W.2 and the medical evidence”.

3. M.Prabhakaran Vs State, through Inspector of Police, Devakottai Taluk Police Station, Sivagangai District reported in 2021(3)MWN Cr.262.

“10.In this case, the Doctor, who gave treatment to the injured was examined as PW7. PW7 deposed that PW1 told him that he was assaulted by one male person with iron rod and the above person caused injury on his scalp and he found that there is cut injury on the middle head measuring 5 cm x 1 cm x 1 cm and PW7 further deposed that after examination, as PW1 told him that he suffered into the bone fracture on the 4th finger of left hand, he referred the injured for taking X-ray. PW1 has not stated before the Doctor that the known person caused injury on his left hand. It was admitted by PW7 during his cross examination. PW7 found injury only on the scalp of PW1. Further, PW7 stated that PW1 told him that he had sustained fracture on the 4th finger of his left hand, hence, he mentioned in the Wound Certificate that the injuries sustained by PW1 are grievous in nature. PW7 has not specifically stated that he found injuries on the left hand of PW1. Hence, the Wound Certificate given by PW7 is not at all genuine one.

11.Further, in this case, X-ray report was not filed and the Doctor, who took X-ray for the injured was also not examined. At this juncture, it is necessary to refer the cross examination of PW7, which would run thus:-



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□..காயம்பட்ட நபர் தன்னை இடது கையிலோ,
விரல்களிலோ தன்னை யாரும் தாக்கியதாக
சொல்லவில்லை. போலீசார் என்னை மறுநாள்
விசாரித்தார்கள். அவ்வாறு விசாரிக்கும் பொது
காயம்பட்ட நபருக்கு கையில் காயம் இருந்ததாக
சொல்லவில்லை.□

PW7 deposed that only on the basis of the statement given by the injured, he determined the injuries as grievous. Hence, the evidence of PW7 is not acceptable, since PW7 has not produced the X-ray report for the injured, but determined the injuries sustained by the injured as grievous. Further, PW7 stated that PW1 himself came to the hospital. But PW1 during his evidence stated that he was taken to the Government Hospital by his Uncle. Hence, this Court is of the considered view that PW7 evidence is not corroborated with the evidence of PW1.

4. Ramasamy Vs Inspector of Police, Melapalayam Police Station and another reported in Crl.O.P(MD)No.17146 of 2018.

“6.As per the case of the de-facto complainant, on 19/08/2014 at about 8.30 pm, when he was going near the place of occurrence, at the instance and abetment of this accused, when he was nearing the Bye Pass road, three persons waylaid, abused him in filthy language and one of the accused persons, caused assault with iron road. He escaped from that, but another person attacked with wooden log on his back and another person stabbed him and three accused persons joined together and because of pain in various parts of the body, he made cry and on hearing the screaming noise, the neighbours came, all the accused persons, fled away from the occurrence place. The complainant was admitted in



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the hospital. He has also stated that only at the abetment of the petitioner, this assault would have been taken place. He was admitted in the hospital and before the Doctor, who examined him has stated that he sustained simple injury, due to assault by three unknown persons. So this shows that there was assault by unknown persons, on 19/08/2014. But the final report goes opposite direction and stated that only this petitioner waylaid the de-facto complainant and abused him in filthy language. During the course of investigation, such a statement appears to have been given by him. Based upon which only, the alternation report has been filed arraying this petitioner as an accused.

7.As mentioned earlier, the de-facto complainant is not a man of ordinary standing. Such a person is capable of giving proper information. But what happened to him subsequent to that is also not clear on record. So this shows that the statement given by him before the Investigating Officer and the subsequent final report are nothing, but abuse of process of court and law. Since they are inherently improbable and mala fide also. The de-facto complainant appears not to be a genuine person. So continuation of the criminal proceedings against the petitioner will clearly amount to abuse of process of court. In the light of the above facts and circumstances, this need not be taken into account.”

19.On careful reading of the said Judgments, it is clear that in order to prove the grievous injury, x-ray taken by the Doctor has to be produced before the Court and failure to mark the x-ray will affect the prosecution case and the offence under Section 326 IPC would not attract.



But in this case, no fracture and it is acid attack case. Further the learned counsel appearing for the accused/petitioner has relied the Judgment in ***Marudanal Augusti Vs State of Kerala***, reported in ***1980 SCC (Cri) 985***. On careful perusal of the said Judgment it is clear that once the FIR is stated to be fabricated or brought into existence long after the occurrence, the entire prosecution case would collapse. But in the case on hand no inordinate delay in sending the FIR to court. There are major contradictions between PW1 and FIR in respect of presence of A1.

20. Therefore, the Judgment and conviction passed by the trial Court and the same was confirmed by the appellate Court in appeal are unsustainable and liable to be set aside. In view of the above facts, the prosecution has failed to prove the charges levelled against the petitioner/first accused for the offence under Section 326 IPC beyond reasonable doubts.

21. In the result, this Criminal Revision Case is allowed and the Judgment and conviction passed by the trial Court in S.C.No.20 of 2014 and confirmed by the appellate Court in Crl.A.No.15 of 2018 are set aside and the petitioner is acquitted from the charge under Section 326 of I.P.C and he set



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be at liberty subject to other cases if any. The bail bond executed by the petitioner if any, shall stands cancelled and fine amount paid, if any, shall be refunded to the petitioner as per law.

22. Accordingly, this Criminal Revision Petition stands allowed.

28.08.2023

NCC : Yes/No
Index : Yes / No
Internet: Yes/ No
PNM

To

1. The Principal District and Sessions Judge, Ramanathapuram
2. The Assistant Sessions Judge/Chief Judicial Magistrate, Ramanathapuram
3. The Inspector of Police,
Erwardi Dharge Police Station,
Ramanathapuram District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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P.DHANABAL, J.

PNM

ORDER IN
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