

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30307 of 2018

Arising Out of PS. Case No.-17 Year-2017 Thana- C.B.I CASE District- Patna

Shashi Shekhar S/o Late Priyavarta Kumar Verma, R/o Flat No. 506,
Maharaja Kameshwar, Residential Complex, Frazer Road, P.S.- Kotwali,
District- Patna-800001.

... .. Petitioner/s

Versus

The Central Bureau Of Investigation Through D. I. G. Of Police, A. C. B.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. S. K. Shrivastava Mr. Apurv Harsh Mr. Manu Tripurari Ms. Shubhi Shrivastava Mr. Raghu Raj Pratap Mr. Gaurav Sharma
For the Opposite Party/s :	Mr. Avanish Kumar Singh Mr. Ambar Narayan Ms. Barkha Mr. Mukul Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 07-03-2025

Heard learned Counsel for the petitioner and learned
Counsel for the Central Bureau of Investigation.

2. This application, under Section 482 of the Criminal
Procedure Code, 1973, has been filed for quashing the entire
criminal proceedings of Special Case no. 03/2017 [R.C. No. 15
(A) /2017], registered under section 120 B of the Indian Penal
Code and Sections 7, 12, 13(2) read with Section 13 (1) (d) of
Prevention of Corruption Act, 1988.



3. The prosecution case, as culled out from the records of this case, is as follows:

4. On 23.08.2017, the First Information Report, bearing RC0232017A0015 was registered under Section 120-B of the Indian Penal Code read with Sections 7, 12, 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988 at the Central Bureau of Investigation, ACB, Patna, against three accused persons, namely, Shashi Shekhar (petitioner), Raj Kumar Agarwal and Dilip Kumar Agrawal.

5. The petitioner, while posted and functioning as Assistant Director, Directorate of Enforcement(ED), Patna, during the year 2017, in conspiracy with Raj Kumar Agarwal of M/s Set Square Holding Private Limited, by abusing his official position as public servant, has been obtaining and accepting illegal gratification from different persons as a motive or reward for discharging his official duties and has illegally collected more than Rs. 10 lacs, which was parked with co-accused Raj Kumar Agarwal, a businessman with the motive to take back the same in the garb of a lawful income at a later date.

6. It has further been alleged that in pursuance of the above criminal conspiracy, the petitioner demanded from Raj Kumar Agarwal the proceeds of the illegal gratification to the tune



of Rs. 10 lacs parked by him and kept with Raj Kumar Agarwal to be delivered to the petitioner in his office at Patna or at any other place along with some blank cheques through Dilip Kumar Agrawal, who is nephew and representative of Raj Kumar Agarwal.

7. After registration of the First Information Report, a trap team was constituted, consisting of CBI officials and two other independent witnesses, in line with the tip received from the source and it was informed to everyone that Shashi Shekhar is arriving at Patna Airport by GO AIR Flight No. G8-131 and will be landing at Patna at 02:10 PM on 23.08.2017 and after arrival at Patna, he was to go to his office situated at Bank Road, Patna. Thereafter, he would proceed to his residence situated at Flat no. 506, Maharaja Kameshwar Residential Complex, Fraser Road, Patna.

8. Acting on the said information, trap team waited discreetly at the exit gate of the Patna Airport. After sometime, the petitioner came out of the Airport with a red trolley bag and he boarded a Hyundai I10 car and proceeded towards his office. The Trap team followed him discreetly. The petitioner reached his office and went inside and after some time, he came out of his office and boarded a Maruti WagonR car and reached his



residential flat. The petitioner came out of the car and went inside his residential flat. The Trap Team waited outside the residential complex of the petitioner and after some time, a person, whose face was similar to the photograph of Dilip Kumar Agrawal provided by the source, arrived with a white polythene bag on a coffee-coloured Honda Activa Scooty and he went inside the residential complex. After some time, Dilip Kumar Agrawal came out of the residential complex and started his Scooty. At that moment, one of the member of the Trap Team, namely, Nitesh Kumar, TLO, intercepted him and after disclosing his identity, interrogated him before the independent witnesses and on such interrogation, he disclosed his name as Dilip Kumar Agarwal, S/o Late Sawan Mal Agarwal, Proprietor of M/s New Dilip and Company, situated at Langar Toli, Patna. He further disclosed that he had gone inside the residential complex to hand over one envelope to the petitioner, as per the instructions of his maternal uncle (mama), namely, Raj Kumar Agarwal, who resides in Kolkata. He further disclosed that as per the instruction of his maternal uncle, earlier a person had handed him over an envelope at about 01 PM to him for its delivery to the petitioner.

9. Thereafter, the Trap Team, along with Dilip Kumar Agarwal entered into the residential complex of the petitioner and



door bell was rung and the door was opened by the petitioner. Nitesh Kumar, TLO, after disclosing his identity told the petitioner that he had taken the delivery of Rs. 10,00,000/- from Dilip Kumar Agarwal, upon which he kept mum. The red-trolley bag, which was brought by the petitioner from the Airport and one another black colour bag was searched and a sum of Rs. 6,60,000/- was recovered in presence of the independent witnesses. The bedroom of the petitioner's flat was also searched, from where a sum of Rs. 4,40,000/- was recovered. Besides this amount, a sum of Rs. 1,28,800/- was also recovered. Thus, total of Rs. 12,28,800/- was recovered from the flat of the petitioner.

10. Upon recovery of huge cash amount from the flat of the petitioner, the petitioner was interrogated and the petitioner told that he had received Rs. 3,00,000/- from Dilip Kumar Agarwal as he had given it to him earlier for renovation of his house at Katihar, which he could not do, as such he has returned the amount, but Dilip Kumar Agarwal denied to have known the petitioner from earlier. The petitioner was again subjected to sustained interrogation and he admitted that the amount of Rs. 11,00,000/- was delivered to him by Dilip Kumar Agarwal. Thereafter, the petitioner as well as Dilip Kumar Agarwal were arrested.



11. On completion of investigation, charge sheet, dated 20.10.2017 was filed against the petitioner, finding the case true under Sections 11, 13 (2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (herein after referred to as the '1988 Act') and cognizance was also taken by the learned trial Court.

12. Learned Counsel for the petitioner submits that from bare perusal of the charge sheet filed by the Central Bureau of Investigation, no offence under Sections 11 and 13(1)(d) of the 1988 Act is made out against the petitioner. He further submits that the entire charge sheet is based on the confessional statement of Raj Kumar Agrawal. However, the said statement is not supported by any other corroborative statement. No material has been brought in the charge sheet to demonstrate that the petitioner had made any demand for illegal gratification or there was acceptance of any such demand. Furthermore, considering the case of the prosecution without going into its truth or otherwise, in the absence of any proof of demand and acceptance of illegal gratification by a public servant, no offence is made out under Section 13(1)(d) of the 1988 Act. He further submits that after perusal of the charge sheet, no offence under Section 11 of the 1988 Act is made out against the petitioner and the Central Bureau of Investigation has failed to bring as to who is the person from



whom the petitioner has received valuable things. Furthermore, the second limb, which says accepts or obtains a valuable thing without consideration, is also not fulfilled.

13. The petitioner relies for the aforesaid proposition on the decisions of the Supreme Court, in the case of **Neeraj Dutta v. State (NCT of Delhi)**, reported in **MANU/SC/1617/2022 : 2022:INSC:1280 :2023 2 SCC 731** and **R. S. Nayak v A.R. Antulay and Others (AIR 1986 2045)**.

14. He further submits that for one cause of action, only one First Information Report is maintainable and since one First Information Report, disclosing offences under Section 13 (1) (e) i.e. Disproportionate Assets, has already been registered, the present First Information Report registered for offences under Sections 7, 12, 13 (2) read with 13 (1) (d) of the 1988 Act has to go as none of the offences are made out against the petitioner.

15. He next submits that telephonic conversations recorded by the Central Bureau of Investigation, by which the prosecution seeks to prove charges levelled against the petitioner cannot be said to be legally admissible evidence as the mandatory requirements laid down under section 5 (2) of The Indian Telegraph Act, 1885 and Rule 419 A of Indian Telegraph Rules,



1995 have not been followed by the Central Bureau of Investigation.

16. In support of his contention, learned Counsel relied upon the decisions of Supreme Court, in the cases of **People's Union for Civil Liberties (PUCL) v. Union of India and another**, reported in (1997) 1 SCC 301 and **Ritesh Sinha v. State of UP**, reported in 2019 (8) SCC 1.

17. It has further been argued that the illegal tapping of telephone conversation being a violation of the right to privacy has, now, been accepted and reinforced as a fundamental right protected under Article 21 of the Constitution of India, by the Supreme Court, in the case of **K. S. Puttaswamy v. Union of India**, reported in (2017) 10 SCC 1.

18. He further submits that the offences alleged in the First information Report, is Section 120-B of the Indian Penal Code read with Sections 7, 12, 13(2) and 13(1)(d) of the 1988 Act, but the charges of First Information Report, under Sections 7 and 12 of the 1988 Act read with Section 120B of the Indian Penal Code, have been dropped in the charge sheet. The offence alleged in the charge sheet are under Section 11, 13(1)(d) and 13 (2) of the 1988 Act, the charge under Section 11 of the 1988 Act, was added in the charge sheet and charge under Section 120B of the Indian



Penal Code and Sections 7 and 12 of the 1988 Act, were dropped by the Central Bureau of Investigation, finding no evidence. The Central Bureau of Investigation admitted the factual matrix of dropping charges as alleged in the First Information Report, under Section 120B of the Indian Penal Code and Sections 7 and 12 of the 1988 Act, and filed charge sheet. A closure report, under Section 169 of the Code of Criminal Procedure, 1973, for the rest of the named accused persons in the First Information Report was filed and the petitioner is the only accused now to be prosecuted by the Central Bureau of Investigation. There remains no allegation of any bribe taking, demand of any bribe or acceptance of any bribe by the petitioner. There is no factum or witness of crime, there is no complainant of crime, who can be cross-examined by the petitioner.

19. In the year 2017, the petitioner was posted at Zonal Office of the Directorate of Enforcement at Patna in the rank of Assistant Director and on 21.08.2017, a team of Central Bureau of Investigation accosted him at Patna Airport where he had arrived from Delhi and directed him to accompany them to his office in Patna, where the said office was searched by the Central Bureau of Investigation and thereafter, he was taken by Central Bureau of Investigation to his residence in Patna where he was found to be in



possession of Rs.12,28,800/-, which was alleged to be amount of illegal gratification received by him from Raj Kumar Agrawal and delivered to him by Dilip Kumar Agrawal, who was alleged to have come to the residence of the petitioner at Patna with an amount of Rs. 11,00,000/-.

20. The petitioner was arrested by the Central Bureau of Investigation on 23.08.2017 at the office of the DIG, CBI, ACB, Patna, as recorded in Arrest Memo of CBI filed before the learned Trial Court on 24.08.2017, admitting that though the case of the Central Bureau of Investigation was that of a Trap Case and the petitioner was accused of receiving illegal gratification of Rs.11,00,000/- from Dilip Kumar Agrawal on behalf of Raj Kumar Agrawal, the Central Bureau of Investigation arrested him on 21.08.2017 while receiving alleged illegal gratification from Dilip Kumar Agrawal and when Dilip Kumar Agrawal was arrested by the CBI on 21.08.2017 for allegedly delivering to the petitioner alleged amount of illegal gratification at his residence on 21.08.2017.

21. The First Information Report lodged by the Central Bureau of Investigation accusing the petitioner as bribe taker and two more persons, namely, Raj Kumar Agrawal and Dilip Kumar Agrawal as bribe giver, but after investigation, the Central Bureau



of Investigation dropped the entire case of demand and receipt of alleged bribe by the petitioner and payment of the same by Raj Kumar Agrawal and delivery of the same by Dilip Kumar Agrawal and has dropped charges under Sections 7 and 12 of the 1988 Act read with Section 120 B of the Indian Penal Code, 1860 and has pressed Sections 11, 13(2) and 13(1)(d) of the 1988 Act. The offence, under Sections 13(2) read with Section 13(1)(d) of the 1988 Act can not be pressed if ingredients of offence under Section 7 of the 1988 Act are not present there.

22. He further argued that after investigation, the Central Bureau of Investigation has admitted that there is no case of demand of illegal gratification by the petitioner nor receipt of the same and/or criminal conspiracy to commit any crime. There was no case of abetment of any offence by anyone including the petitioner as the Central Bureau of Investigation has dropped Section 12 of the 1988 Act in its charge sheet and Section 120B of the Indian Penal Code. Thus, the only material issue that needs to be considered by this Court is if an offence under Section 13(1)(d) of the 1988 Act can be alleged if there is no demand made for illegal gratification by the petitioner and if that being the case, can an offence under Section 11 of the 1988 Act be alleged by the Central Bureau of Investigation against the petitioner. Lastly, it has



been submitted that no offence under Section 13(1)(d) and 11 of the 1988 Act is made out and allowing criminal proceeding and trial to continue would amount to failure of justice and abuse of the process of administration of justice.

23. On the other hand, learned Counsel for the Central Bureau of Investigation argued that investigation has revealed that the petitioner, being the Assistant Director in Enforcement Directorate, Patna, by abusing his official position as a public servant firstly parked Rs. 11,65,000/- by illegally obtaining and accepting illegal gratification from different persons as a motive or reward for discharging his official duties with Raj Kumar Agarwal, a businessman with the motive to take back in the garb of a lawful income at a later date and later demanded from him Rs. 10,00,000/- and some cheques, out of that money which was duly recovered by the trap team in the form of Rs. 12,28,800/- on 23.08.2017 from the flat belonging to the petitioner. It also establishes that the petitioner obtained huge cash amount which was not his legal remuneration without any consideration from Raj Kumar Agarwal with whom he was concerned with the proceeding and legal formalities in a case under the provisions of the Foreign Exchange Regulation Act, 1973. The act of the petitioner to obtain Rs. 10,00,000/- and blank cheques, which he subsequently



received in the form of Rs. 11,00,000/- from Raj Kumar Agarwal through his nephew Dilip Kumar Agarwal and in due course the recovery of five blank cheques sent through speed post intended to be delivered to him reasonably establishes his mala fide intention to obtain pecuniary gains by abusing his official position as a public servant. Further dealing with such a huge amount through Raj Kumar Agarwal, who happens to be one of the accused in FERA case at the time of his posting at Enforcement Directorate, Kolkata, clearly shows the dishonest act on the part of the petitioner which is unbecoming of a public servant.

24. He further submits that recorded conversation among the petitioner, Raj Kumar Agarwal and Dilip Kumar Agarwal clearly revealed that the petitioner had demanded Rs. 10,00,000/- in cash and ten cheques of Rs. 10000-12000.

25. Investigation further revealed that Dilip Kumar Agarwal handed over Rs. 11,00,000/- to the petitioner on the instruction of Raj Kumar Agarwal on the day of trap. During investigation, the statement of Dilip Kumar Agarwal under Section 164 of the Code of Criminal Procedure, 1973, was recorded before the Judicial Magistrate in which he has accepted handing over of Rs. 11,00,000/- to petitioner on the instruction of his Mama (maternal uncle) Raj Kumar Agarwal on the day of trap and he



categorically denied having any acquaintance with the petitioner from before. The aforesaid facts indicate that Dilip Kumar Agarwal was used as a conduit and had no direct role in this episode.

26. During investigation, the sample voice of the petitioner and Raj Kumar Agarwal was obtained and sent to CFSL, New Delhi to compare the same with the recorded telephonic conversation by the Special Unit, New Delhi. The forensic voice examination report from the CFSL, New Delhi vide certificate no. TC -5846 dated 02.01.2019 gave positive reports with regard to the questioned voice of the petitioner as well as that of Raj Kumar Agarwal and Dilip Kumar Agarwal.

27. Since the acts aforesaid disclosed commission of offence punishable under Section 11 and Section 13(2) read with Section 13(1)(d) of the 1988 Act by the petitioner, accordingly charge sheet has been filed against the petitioner under the above sections of law.

28. The petitioner took back the ill gotten amount from Raj Kumar Agarwal without any consideration with whom he was concerned with the proceedings and legal formalities of the FERA case registered in 1994 at the Enforcement Directorate, Kolkata where the accused was posted as Assistant Enforcement Officer



during that period. In addition, for obtaining the said pecuniary advantage from Raj Kumar Agarwal there has been clear efforts on the part of the petitioner in terms of his visiting Kolkata for parking the ill gotten money and consequent demand for money and cheques from Raj Kumar Agarwal and lastly accepting the same from Dilip Kumar Agarwal. There is sufficient oral and documentary evidence against the petitioner. Cognizance has also been taken. Hence the prayer of the petitioner is devoid of any merit and needs to be rejected.

29. In support of his submission, he has placed reliance on the decisions of the Supreme Court, in the cases of **Devendra Nath Padhi v. State of Odisha**, reported in **(2005) 1 SCC 568**, **CBI v. Aryan Singh**, reported in **2023 SCC Online (SC) 379**; **P. Vijayan v. State of Kerala**, reported in **(2010) 2 SCC 398**, **B. Noha v. State of Kerala**, reported in **(2006) 12 SCC 277**, **Fertico Marketing and Others v. CBI**, reported in **(2021) 2 SCC 525**.

30. I have heard learned counsel for the parties and have perused the materials on record.

31. The ambit and scope of Section 482 of the Code of Criminal Procedure, 1973, has elaborately been discussed by the Supreme Court starting from the case of **R. P. Kapur v. State of Punjab [AIR 1960 SC 866]**; **State of Haryana v. Chaudhary**



Bhajan Lal and Others, reported in **1992 Supp (1) SCC 335** and various other judgments.

32. The Supreme Court has broadly given the guidelines at the time of exercising power under Section 482 of the Code of Criminal Procedure, 1973 and/or Article 226/227 of the Constitution of India. The broad parameters, while exercising the jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, and/or Article 226 of the Constitution of India, as prescribed by the Supreme Court are that neither a detailed inquiry nor a meticulous analysis of the material nor any assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

33. The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution. The First Information Report /complaint or as a matter of fact even charge sheet is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail,



the proceedings should not be quashed. Quashing of the criminal proceeding is warranted only where the First Information Report/ complaint or evidence collected during investigation is so bereft of even the basic facts, which are absolutely necessary for making out the offence.

34. Coming to the facts of the present case, the case at hand is a trap case based upon reliable source information. The charge sheet contains a list of 24 witnesses who are proposed to be examined by the prosecution to prove the case against the petitioner. This is a case where the charge sheet has been filed after investigation and cognizance has been taken against the petitioner.

35. The petitioner has relied upon the decision of **Neeraj Dutta** (supra) in support of his argument.

36. In the case of **C. K. Damodaran Nair v. Government of India**, reported in (1997) 9 SCC 477, the Supreme Court has considered the word “obtain” and said that “obtain” means to secure or gain (something) as as a result of request or effort. In the case of obtainment, the initiative vests in the person who receives and, in that context, a demand or request from him will be primary requisite for an offence under Section 5 (1) (d), now Section 13(1)(d) of the 1988 Act.



37. In the case of **Neeraj Dutta** (supra), the Supreme Court has held that if a public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which, in turn, is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant.

38. Relying on the decision of the Supreme Court, in the case of **Neeraj Dutta** (supra), learned Counsel for the petitioner submits that without proof of demand, no offence under Section 13 (1) (d) of the 1988 Act can be made out. He further argued that in the absence of ingredients of offence under section 7 of the Act, no offence under Section 13 (1) (d) of the 1988 Act can be attracted. In the same very decision, the Supreme Court has held that in the absence of evidence of the complainant (direct/primary, oral/documentary evidence), it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the 1988 Act, based on other evidence adduced by the prosecution. Further, the fact in issue, i.e. the proof of demand and acceptance of illegal gratification, can also be proved by circumstantial evidence in the absence of direct, oral or documentary evidence.



39. In the present case, one such evidence, which has been brought by way of charge sheet, is the recorded telephonic conversation, from which, it is evident that the petitioner demanded Rs. 10,00,000/- in cash and ten cheques of Rs. 10000-12000/- from Raj Kumar Agrawal.

40. Learned Counsel for the petitioner also argued that telephonic conversation recorded without the consent of the petitioner cannot be taken as a piece of evidence inasmuch as the Central Bureau of Investigation registered First Information Report for trap case, based on interception of telegraph and is relying on intercepted telegraphic material, but it did not follow at all the law as laid down by the Supreme Court for interception of the telegraph and the provisions of Section 5 (2) of the Indian Telegraph Act, 1885, and Rule 419A of the Indian Telegraph Rules, 1956, without which the intercepted telegraphic material is not admissible in evidence and all action based on such telegraphic material is liable to be quashed.

41. In the case of **State (NCT of Delhi) v. Navjot Sandhu**, reported in **(2005) 11 SCC 600**, a question arose before the Supreme Court regarding the legality and admissibility of intercepted telephone calls in the context of telephonic conversation, the Supreme Court was of the view that Section 5(2)



of the Telegraph Act or Rule 419-A does not deal with any rule of evidence. It has been held that non-compliance or inadequate compliance with the provisions of the Telegraph Act does not *per se* affect the admissibility. The legal position regarding the question of admissibility of the tape-recorded conversation illegally collected or obtained is no longer *res integra* in view of the decision of Supreme Court, in the case of **R.M. Malkani v. State of Maharashtra**, reported in (1973) 1 SCC 471. In that case, the Supreme Court clarified that a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible as *res gestae* under Section 7 of the Evidence Act. The law has been laid down that any evidence cannot be refused to be admitted by the Court on the ground that it had been obtained illegally.

42. In the case of **K. S. Puttaswamy and Another v. Union of India and others**, reported in (2017) 10 SCC 1, the Supreme Court has held that “right to privacy” has multiple facets and though such right can be classified as a part of fundamental right emanating from Articles 19(1)(a) and (d) and Article 21 of the Constitution of India, yet it is not absolute, and it is always subject to certain reasonable restrictions on the basis of compelling social, moral and public interest and any such right when asserted



by the citizen in the court of law, then it has to go through a process of case-to-case development.

43. Nonetheless, it is altogether a different case where such evidence is admissible or not, which will be examined during trial of the case.

44. In the proceeding under Section 482 of the Code of Criminal Procedure, 1973, it is not desirable for the Court to hold a full-fledged inquiry or to appreciate the evidence collected by the investigating agency to find out whether the case would end in conviction or acquittal. At the time of deciding the petition for quashing, only *prima facie* case is to be seen and the truthfulness of the allegations are not to be seen. The learned C.B.I. Court, after submission of charge sheet by the Central Bureau of Investigation and after finding a *prima facie* case against the petitioner, has taken cognizance of the offence against the petitioner.

45. From perusal of the First Information Report and the charge sheet, it cannot be said that no offence is made out from the allegation put forth against the petitioner.

46. On careful scrutiny and analysis of the allegations incorporated in the First Information Report and the charge sheet discussed herein above, a *prima facie* case is made out against the



petitioner and the learned Special Court, C.B.I., has rightly taken cognizance of the offence against the petitioner.

47. Having regard to the totality of the facts and circumstances, discussed and noticed above, I am of the considered opinion that the investigation and the order taking cognizance are not so erroneous that allowing the trial to progress may cause miscarriage of justice. In the result, I do not find any merit in this application.

48. This application is, accordingly, dismissed.

49. There shall be no order as to cost.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	10.01.2025
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