IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.21559 of 2017

CNR No. BRHC010508352017

Arising Out of PS. Case No.-415 Year-2016 Thana- PATNA COMPLAINT CASE District-Patna

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Atul Shrestha, S/o- Late Murari Mohan Prasad, a resident of Diwan Mohalla, T.P. Lane, P.S. - Khaje Kalan, Patna City, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Manish Ranjan Kumar, Son of Sri Yugal Kishore Prasad, a resident of Ambedkar Chowk, Anuradha Niwas, Hanuman Nagar, P.S. - Patrakar Nagar, District - Patna, at present residing at Kanti Factory Road, Mahatma Gandhi Nagar, P.S.- Patrakar Nagar, District - Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha, Adv.

For the Opposite Party/s : Mrs. Pronati Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

C.A.V. JUDGMENT

Date : 06-11-2026

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*in short* ***Cr.P.C.***) seeking quashing of the order dated 23.11.2016 passed by the learned Additional Chief Judicial Magistrate-XV, Patna in

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Complaint Case No. 415(C) of 2016, whereby cognizance has been taken for the offences punishable under Sections 406, 420 and 120-B of the Indian Penal Code (*in short* ***I.P.C.***) and summons have been directed to be issued against the petitioner and other accused persons.

2. The prosecution case as emerges from the complaint petition is that complainant/opposite party no. 2, Manish Ranjan Kumar, claims to have been associated with Samadhan Seva Samiti, a society registered under the Societies Registration Act, 1860, and to have functioned as its Secretary. The society is stated to have been engaged in activities relating to social welfare and community development.

According to the complaint, on account of an injury suffered by the complainant, the keys of the office almirah were handed over jointly to the Chairman and the Treasurer of the society on 18.08.2011. It is alleged that when the complainant subsequently visited the community Sauchalaya at Transport Nagar on 16.09.2011 to supervise its maintenance and sought the relevant accounts, he was informed that the accounts had already been furnished to the Chairman on the direction of the Treasurer.

The complainant further alleged that disputes arose

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regarding the functioning of the society, the convening of its meetings and the return of the keys of the office almirah. He alleged that the office-bearers had conspired against him and had committed acts of cheating, forgery, criminal breach of trust and misappropriation of the funds of the society.

3. On the basis of the allegations, the complainant initially instituted Complaint Case No. 19(C) of 2012 which was forwarded to the police under Section 156(3) of the Cr.P.C., pursuant to which Patliputra P.S. Case No. 25 of 2014 came to be registered for offences under Sections 406, 420, 120-B, 467, 468, 471 and 477-A/34 of the I.P.C.

4. Upon investigation, the police submitted Final Report No. 332/14 dated 31.10.2014, stating that no criminal offence had been made out and that the dispute was civil in nature. The final report was accepted by the learned Magistrate on 21.11.2015. However, the protest petition filed by the complainant was treated as a complaint case, which came to be registered as Complaint Case No. 415(C) of 2016.

5. After conducting an inquiry and recording the statement of the complainant and his witnesses, the learned Additional Chief Judicial Magistrate- XV, Patna by the impugned order dated 23.11.2016, took cognizance of the

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offences punishable under Sections 406, 420 and 120-B of the I.P.C. and directed issuance of summons against six persons, including the present petitioner.

6. Mr. Rajni Kant Jha, learned counsel appearing on behalf of the petitioner submits that the impugned order is unsustainable in law, as the learned Magistrate has failed to appreciate the nature of the dispute and the absence of the essential ingredients of the offences alleged.

7. It is submitted that the allegations arise out of disputes concerning the management and administration of Samadhan Seva Samiti, particularly the appointment and removal of its office-bearers, the custody of the office keys and the maintenance of accounts. Such disputes, according to the petitioner, are essentially internal and civil in nature and cannot, without the necessary criminal ingredients, be converted into criminal proceedings.

8. Learned counsel further submits that the police, after investigation, found no criminal offence to have been committed and submitted a final report categorising the matter as civil in nature. It is contended that although the learned Magistrate was competent to proceed on the basis of a protest petition, the materials available on record did not justify taking

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cognizance against the petitioner.

9. It is further contended that the complaint does not disclose any specific act of entrustment of property to the petitioner followed by dishonest misappropriation or conversion thereof. Similarly, the essential ingredients of cheating and criminal conspiracy are stated to be absent. The petitioner accordingly submits that continuation of the criminal proceeding would amount to an abuse of the process of the Court and prays for quashing of the impugned order and the consequential proceeding.

10. None appears on behalf of opposite party No. 2, despite having already filed the counter-affidavit on behalf of opposite party No. 2. In the counter-affidavit, opposite party no. 2 has opposed the prayer for quashing and supported the impugned order taking cognizance, reiterating the averments made in the complaint case.

11. From the counter-affidavit filed on the behalf of opposite party No. 2, it transpires that the opposite party No. 2 was the Secretary of the Samadhan Seva Samiti and that disputes arose when he sought access to the accounts and records of the society. The petitioner and other office-bearers acted in concert, withheld the keys of the office almirah and

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were involved in financial irregularities and misuse of the funds of the society.

12. It is also evident from the counter-affidavit that the police report does not conclude the controversy so as to prevent the competent criminal court from proceeding on the basis of the complaint and the evidence recorded during the inquiry. It is stated that the learned Magistrate considered the materials placed before the Court and found sufficient grounds for proceeding against the accused persons.

13. The counter-affidavit refers to correspondence concerning the status of the office-bearers of the society, bank statements and agreements relating to the work undertaken by the society. According to opposite party no. 2, these materials support the allegations of financial irregularities and demonstrate the necessity of a proper adjudication of the matter in accordance with law.

14. Lastly, it is contended in the counter-affidavit that the disputed questions concerning the accounts, the custody of records and the respective roles of the persons concerned cannot appropriately be determined in an application seeking quashing of criminal proceedings. The application is accordingly opposed.

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15. Mrs. Pronati Singh, learned Additional Public Prosecutor appearing on behalf of the State submits that the learned Magistrate, upon consideration of the complaint and the inquiry evidence, has taken cognizance of the offences under Sections 406, 420 and 120-B of the I.P.C. It is contended that the police final report is not conclusive and does not preclude the learned Magistrate from proceeding in accordance with law.

16. Thus, it has been stated that the allegations and the materials on record do not warrant interference by this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. Accordingly, the State opposes the application seeking quashing of the impugned order.

17. This Court has heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State and have perused the materials available on record. Despite service, none has appeared on behalf of opposite party no. 2, though a counter-affidavit filed on his behalf, is available on record and the same has also been considered.

18. Before proceeding further, it would be apposite to reiterate that the inherent jurisdiction under Section 482 Cr.P.C. is intended to prevent abuse of the process of any Court and to secure the ends of justice. Although such power is to be

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exercised sparingly and with circumspection, the High Court would not hesitate to interfere where the allegations, even if taken at their face value, fail to constitute any offence.

19. The principal issue which falls for consideration is whether the allegations made in the complaint, even if accepted in its entirety, disclose the essential ingredients of the offences punishable under Sections 406, 420 and 120-B of the I.P.C. so as to justify continuation of the criminal proceeding against the petitioner.

20. At this stage, this Court considers it appropriate to examine whether the offences punishable under Sections 406 and 420 of the I.P.C. can simultaneously be attracted on the basis of the same set of allegations. So, it would be germane to consider the ingredients of Section 406 and 420 of the I.P.C.

21. Section 405 of the I.P.C. defines the offence of ‘criminal breach of trust’ which stipulates that:-

> *“**405. Criminal breach of trust**.— Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made*

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touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."

(Note:- Explanation 1 & 2 of Section 405 is not relevant for the purpose of this case.)

22. The offence under Section 405 of the I.P.C. is made punishable under Section 406 which reads as follows:-

*"**406. Punishment for criminal breach of trust**.— Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

Thus, for Section 406 of the Indian Penal Code to get attracted, there must be a criminal breach of trust in terms of Section 405 of the I.P.C. The essential ingredients for invoking Section 405 of the I.P.C. are enumerated hereunder:-

"(a) the accused was entrusted with property, or entrusted with dominion over property;

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal

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contract which the person had made, touching the discharge of such trust.

In other words, for the invocation of the offence of criminal breach of trust, it is expedient that the use of disposal of the property is made by a persons entrusted with or who has dominion over the property.

Furthermore, such an act must not only be done dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying out the trust."

23. The offence of cheating has been defined under Section 415 read with Section 420 of the I.P.C. and the 'ingredients constituting an offence' is evident from the bare perusal of the aforesaid Sections itself:-

"(i) Fraudulent or dishonest inducement of a person by deceiving him,

(ii) The person so induced should be intentionally induced to deliver any property, or

(iii) Person so induced shall be intentionally induced to do so or to omit to do anything which he would not do or omit if he was not so deceived,

(iv) The aforesaid acts or omissions should be one which causes or likely to cause damage or harm to the person so induced in body, mind, reputation or property,

(v) A fraudulent and dishonest inducement is an essential ingredient of cheating."

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24. In essence, the ingredients of the two offences are intrinsically contradictory and mutually exclusive in nature and as such, cannot co-exist. Consequently, their simultaneous application would be legally impermissible.

25. In this regard, reliance may be placed upon the judgment of the Hon'ble Supreme Court in ***Arshad Neyaz Khan v. State of Jharkhand & Anr.***, reported in ***2025 SCC OnLine SC 2060***, in which the Hon'ble Supreme Court has already considered the proposition of law laid down in the case of ***Delhi Race Club (1940) Ltd. & Ors. Vs. State of Uttar Pradesh & Anr.***, reported in ***(2024) 10 SCC 690*** and having considered the same, the Hon'ble Supreme Court held that:-

> *"Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited vs. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is*

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> *necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint can not contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other."*

Thus, while cheating proceeds on the basis of dishonest intention at the inception of the transaction, criminal breach of trust pre-supposes lawful entrustment followed by subsequent dishonest misappropriation.

26. The Hon'ble Supreme Court observed that the offence of cheating involves dishonest intention at the inception, whereas criminal breach of trust presupposes lawful entrustment of property, which is subsequently dishonestly misappropriated. The two offences are antithetical in nature and cannot coexist simultaneously on the same set of allegations.

27. In the case of ***Delhi Race Club*** *(supra),* the

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Hon’ble Supreme Court has very strongly deprecated the practice of invoking these two Sections *viz.*, 406 and 420 of the I.P.C. simultaneously by investigating agency or by the Court and has laid down that :-

> *“42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police - to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.*
>
> *43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other.”*

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28. In the present case, the allegations regarding the custody of the office keys and the alleged subsequent financial irregularities are sought to be brought within the ambit of both Sections 406 and 420 I.P.C. However, the complaint does not disclose the necessary particulars constituting either dishonest inducement at the inception or subsequent dishonest misappropriation of specifically entrusted property.

29. However, certain facts of the case at hand needs to be succinctly described hereunder in order to have proper appreciation as to whether offence under Sections 406 and 420 of the I.P.C. is made out or not :-

i) The plain reading of the complaint petition, solemn affirmation of the complainant and the documents brought on record on behalf of the petitioner disclose the true nature of dispute between the parties, which appears to be dispute with respect to the removal of complainant from the post of Secretary and nomination of new Secretary in his place thereof.

ii) The complainant initially filed an application before the Assistant Registration Inspector General regarding enquiry of Samadhan Seva Samiti of which the complainant was Secretary.

iii) The Assistant Registration Inspector General conducted an enquiry and submitted its report vide letter no. 997, dated 02.09.2013, pointing

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out that on 28.07.2007 new Executive Committee for running the aforesaid Samadhan Seva Samiti was constituted, of which the complainant was nominated as Secretary.

iv) Thereafter on 13.10.2011, the petitioner and other members of the NGO gave a notice for no confidence motion. Thereafter on 16.10.2011, a meeting of the general body was convened, in which all twenty members participated.

v) In the aforesaid general body meeting, the complainant, Manish Ranjan Kumar, was removed from the post of Secretary and in his place the petitioner was nominated as the Secretary and other new members were also nominated in the Executive Committee.

vi) Thereafter, in the meeting of the General Body of the Society dated 17.11.2011, the resolution taken on 16.10.2011, whereby the complainant was removed from the post of Secretary, was affirmed.

vii) The report dated 02.09.2013 of the Assistant Registrar Inspector General states that the complainant, Manish Ranjan Kumar, is interested in getting himself dissociated from the Society, so that he could not be made answerable for any of the unwanted and undesirable act which may be committed by society in times to come.

viii) Thereafter the Complaint Case No. 19(C) of 2012 was filed by complainant on 03.01.2012, i.e., after two months of his removal from the post of Secretary of the Samadhan Seva Samiti which was

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sent to the police for registration of the FIR under Section 153 of the Cr.P.C. upon which the Pataliputra P.S. Case No. 25/2014 dated 10.01.2014 was registered in which after investigation police submitted final form, holding the case to be of civil nature.

30. The facts described hereinabove does not leave an iota of doubt with respect to the true nature of dispute between the complainant and the petitioner. There is absolutely no allegation of any entrustment of any kind of property, movable or immovable of any valuation which thereafter has been misappropriated by the petitioner.

On the contrary, the petitioner replaced the complainant as Secretary of the Samadhan Seva Smiti which seems to have irked the complainant who in order to wreak vengeance of the petitioner initially filed the complainant case, after two months of his removal from the post of Secretary of the Samiti upon which a police case was instituted and when police submitted final form holding the case to be of civil in nature, the complainant filed a protest application upon which the instant criminal prosecution has been initiated against the petitioner and anothers.

31. The real nature of dispute with respect to the

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holding of the position of authority in the Samadhan Seva Smiti also becomes manifestly evident from the report of the Assistant Registration Inspector General which throws ample light on the exact nature of dispute between the parties. No chit of paper nor any shred of evidence has been brought on record in order to evince that the petitioner has committed any of the offences as alleged against him.

32. Thus, in this conspectus of the factual backgound which on proper analysis and close scrutiny does not affect that any of the ingredients of Sections 406 and 420 of the I.P.C. is attracted or satisfied in the case at hand so as to allow the instant prosecution under the aforesaid penal provisions to continue.

33. Therefore, in the light of the principles laid down by the Hon'ble Supreme Court in ***Delhi Race Club*** *(supra)* and ***Arshad Neyaz Khan*** *(supra)*, continuation of the prosecution for the offences under Sections 406 and 420 I.P.C. against the petitioner would not be justified in the absence of the requisite foundational ingredients.

34. So far as the offence under Section 120-B of the I.P.C. is concerned, the Hon'ble Supreme Court in ***Sanjeev vs. State of Kerala*** reported in ***2023 SCC OnLine SC 1470***, while

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referring to State through ***Superintendent of Police***, ***CBI/SIT vs. Nalini & Others, (1999) 5 SCC 253***, has laid the ingredients of criminal conspiracy under section 120-B of the I.P.C. which reads as follow:-

> *"i. Conspiracy is when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means.*
>
> *ii. The offence of criminal conspiracy is an exception to the general law, where intent alone does not constitute crime. It is the intention to commit a crime and join hands with persons having the same intention.*
>
> *iii. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.*
>
> *iv. Where in pursuance of the agreement, the conspirators commit offenses individually or adopt illegal means to do a legal act that has a nexus to the object of the conspiracy, all of them will be liable for such offenses even if some of them have not actively participated in the commission of those offenses."*

35. The Hon'ble Supreme Court held that criminal conspiracy is constituted when two or more persons agree to do or cause to be done an illegal act or a legal act by illegal means. It was further observed that mere intention to commit an offence

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is not sufficient; there must also be an agreement between persons sharing such intention to carry out the unlawful object. Conspiracy is generally hatched in secrecy and, therefore, its existence and objects are ordinarily required to be inferred from the surrounding circumstances and the conduct of the accused.

36. Applying the aforesaid principles to the facts of the present case, this Court finds that the allegations primarily relate to disputes concerning the management and functioning of Samadhan Seva Samiti, custody of its office keys and maintenance of accounts. Although allegations of conspiracy have been levelled against the petitioner and other office-bearers, no specific material has been brought to demonstrate an agreement or meeting of minds between them to commit an illegal act or to achieve any unlawful object by illegal means.

37. The mere fact that the petitioner and other accused persons were associated with the management of the Samiti or that disputes arose amongst them concerning its functioning would not, by itself, constitute criminal conspiracy. In the absence of circumstances indicating a common agreement to commit an illegal act, the essential ingredients of Section 120-B of the I.P.C. remain unfulfilled.

38. Consequently, this Court finds that the

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allegations made in the complaint, even if taken at its face value, do not disclose the commission of an offence punishable under Section 120-B of the I.P.C. against the petitioner.

39. In view of the discussions made hereinabove and the law laid down by the Hon'ble Supreme Court in ***Arshad Neyaz Khan vs. State of Jharkhand & Anr.*** *(supra)* and ***Sanjeev*** (*supra*), this Court is of the considered opinion that the continuation of the criminal proceeding against the petitioner would amount to an abuse of the process of the Court.

40. In the present case, the manner in which, the learned Trial Court has proceeded to take cognizance of the offences shocks the conscience of the Court. It appears that the learned Magistrate without applying his judicial mind to the given set of facts, took cognizance of offences and allowed the criminal prosecution against the petitioner to set in motion in the most mechanical manner.

41. The concept of constituting the Trial Court is with the solemn object in view that the Court will act independently, of the influence of the police authority and will apply its judicial mind to the given set of facts in order to allow any criminal prosecution to be initiated against any person while protecting the innocent at the same time. If this power of

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initiation of criminal prosecution is exercised so carelessly, without properly appreciating and examining as to whether the ingredients of the offences alleged are made out or not, the entire edifice of the criminal justice system would crumble and fail to live upto the expectations for which it has been created.

42. At this stage, it would be apposite to quote the stringent warning given by the Hon'ble Supreme Court in the case of ***Vishal Noble Singh Vs. State of Uttar Pradesh and Another***, reported in ***2024 SCC OnLine SC 1680***, wherein it was observed that:-

> *"....in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud...."*

The aforesaid observation of the Hon'ble Supreme court has recently been approved by the Hon'ble Court in the case of ***Delhi Race Club*** *(supra)*.

43. *Ex-consequenti*, the order dated 23.11.2016 passed by the learned Additional Chief Judicial Magistrate-XV, 1st Class, Patna, in Complaint Case No. 415(C) of 2016,

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whereby cognizance has been taken against the petitioner for the offences punishable under Sections 406, 420 and 120-B of the I.P.C., along with all consequential criminal proceedings, insofar as they relate to the present petitioner, are hereby quashed and set aside.

44. Accordingly, this application is allowed.

45. All pending interlocutory application(s), if any, also stand disposed of.

(Rana Vikram Singh, J)

Rakesh/-

AFR/NAFR	AFR
CAV DATE	14.08.2026
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