2026:AHC-LKO:51931

HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW **AFR**

CRIMINAL REVISION No. - 437 of 2026

Anup Kumar Shrivastava

.....Revisionist(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko.

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Avdhesh Kumar Pandey, Radhika Varma, Shreshth Srivastava, Trisha Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 27

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. Heard submissions of Shri Shreshth Srivastava, Advocate and Ms. Sarika Mittal, learned counsel for the revisionist and learned AGA for the State against disposal of discharge application filed by the revisionist before the trial court.

2. Instant criminal revision, had been preferred against impugned order dated 19.03.2026 passed by learned Special Judge, Prevention of Corruption Act, Court No.1, Lucknow arising out of Case Crime No.24 of 2012 under section 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988. By the impugned order, the learned trial court has dismissed the discharge application filed by the revisionist under section 239 of the Code of Criminal Procedure.

3. The facts relevant for present revision are that on 15.11.2010 a Government Order No. 108/1/84/2010 was issued by the State Government on the basis of a communication received from the Anti-Corruption Department, directing an 'open' investigation against the revisionist. In the said enquiry allegedly discrepancy of Rs.3,16,341/- in respect of the revisionist between the known sources of income and the assets found, wherein the known income was stated to be Rs.10,89,199/- and the assets found were Rs.13,24,450/-. On the basis of this Government Order, a report was prepared by the Anti-Corruption

Department and the same was forwarded to the Inspector-in-Charge for the registration of the First Information Report under section 13(1)(e) r/w section 13 (2) of the Act. Pursuant to the said directions, the matter was forwarded to the Inspector-in-Charge, and on 20.01.2012 an FIR came to be registered against the revisionist. As per the report dated 28.03.2017 prepared by the Anti-Corruption Department for the check period from 01.04.2004 to 31.12.2004, a discrepancy of Rs.1,69,815/- was alleged in the income of the revisionist from known sources. The report recorded that the known income of the revisionist was Rs.10,89,199/-, whereas the total income assessed was Rs.12,59,014/-, and the matter was forwarded for approval to grant sanction under Section 19 of the Prevention of Corruption Act. He was posted as P.A., Revenue and Special Intelligence, Lucknow.

4. Learned counsel for the revisionist submitted that solely on the basis of the aforesaid alleged difference, the accused/applicant has been booked for the offences punishable under Sections 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. That Vide letter no. 1770/8 T.C. dated 9/8/2018, sanction was granted; however, the same was accorded without due application of mind. The revisionist further preferred a Discharge Application which was subsequently dismissed by the impugned order.

5. Feeling aggrieved by the said impugned order, the revisionist/accused has filed the present revision before this Court under Section 401 of the Code of Criminal Procedure / 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to quash the impugned order dated 19/03/2026 passed by Special Judge (Prevention of Corruption Act), Lucknow, whereby discharge application moved by the revisionist has been dismissed. He has prayed for quashing of criminal proceedings initiated against him and also a prayer to discharge him from alleged charges.

6. Learned counsel for the revisionist submitted that the alleged check period in the present case is from 01/04/2004 to 31/12/2004. However, the Government Order directing initiation of departmental inquiry was issued only in the year 2010 and the FIR was subsequently registered in

the year 2012. Thus, there is an inordinate and unexplained delay of about 8 years from the end of the alleged discrepancy during the check period till the registration of the FIR. The prosecution has failed to disclose any justification for such abnormal delay. Such prolonged and unexplained delay in initiation of criminal proceedings causes serious prejudice to the revisionist and is violative of the right to a speedy trial guaranteed under Article 21 of the Constitution of India.

7. He next submitted that the prosecution has failed to correctly ascertain the "known sources of income" of the applicant inasmuch as the report prepared by the department shows a discrepancy of Rs.1,69,815/- during the check period. It is well settled principle of law that in order to establish an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, the prosecution must prove :-

(i) the known sources of income of the accused;

(ii) the assets possessed by the accused during the check period;

(iii) that such assets are disproportionate to the known sources of income.

8. He also submitted that the Sanctioning Officer, while granting the sanction, has failed to apply his mind, which is sine qua non for granting the sanction under Section 19 of the Act. A careful reading of the sanctioning order would reveal that the order has been passed without recording any reason. Inasmuch as the the representation made by the applicant/accused has not been considered. Sanction order is non-speaking and thus contrary to ratio of Hon'ble Supreme Court in **C.S. Krishnamurthy vs State Of Karnatak (2005) 4 SCC 81.**

9. He further submitted that on perusal of impugned order, it is obvious that learned Special Judge, while rejecting the discharge application, has gone into a different tangent inasmuch as learned Special Judge has only dealt with the powers of the discharge but nowhere the contentions of the accused/applicant nor any finding on the arguments raised during the hearing of discharge application has been recorded. The discharge application has been dismissed in a mechanical manner without application of mind from.

10. From perusal of report as well as the sanction letter, it is quite imperative that the head of "known sources of income" has not been clearly demonstrated by the respondent inasmuch as the department has included the loan assets as well as the amount spent for the maintenance of the family members. Further the revisionist in his letter addressed to Additional Director, Revenue and Intelligence has clearly stated that he has taken loan from his friends etc. and therefore, the case against him under the Prevention of Corruption Act is only an abuse of process of law. The current proceedings are nothing but an abuse of absolute process of law which are being carried out to harass the revisionist.

11. The income which is available at the disposal of the public servant will only be considered to adjudicate the question of disproportionate assets. The amount, spent by the revisionist on his family, was also added by the department in his income. He has taken a house loan from IDBI Bank in the year 2025. The revisionist got a sale deed executed on 30/07/2005 of a land situated at Dali Bagh, Lucknow on 30/07/2005 from its owner Smt. Anjana Gadhoke. The said sale deed was executed in favour of the revisionist and his wife for sale consideration of Rs.6,00,000/-. The land was measuring 142.66 square meter which is part of Plot No.12, Dalibagh Butler Road, Lucknow. He took loan from his friends and relatives. Later on he built some flats by taking loan from friends and relatives and inform the competent officer in writing. There is discrepancy with regard to amount which was found discrepant to the "known sources of income" of the revisionist in FIR as well as in charge sheet. In the FIR discrepancy shown as Rs.3,16,341/- whereas after investigation this amount was reduced to Rs.1,69,815/-. This depicts a loophole in prosecution case which has been oversighted by learned trial court. The revisionist has informed department as well as Investigating Officer that he taken loan amounting to Rs.45,00,000/- from the friends and relatives for construction of flat of land purchased by him jointly with his wife. He is a member of Hindu Undivided Family (HUF) and assets and financial transaction attributable to the family have been wrongly and illegally treated as the exclusive income of the revisionist. But said facts has not been rebutted by the prosecution. The disputed amount of Rs.5,00,000/- as well as other amount reflected in calculation sheet are

part of the same loan amount borrowed by the accused from his friends and relatives. There is independent and separate source of income of the revisionist as alleged by the prosecution. No offence is made out against the revised on the facts of the case.

12. Learned Trial Court has erred in law in misapplying the concept of "strong suspicion" by proceeding on assumptions and conjectures rather than on legally admissible material, and has thereby wrongly recorded a prima facie case without demonstrating the existence of the essential ingredients of the alleged offence under section 13 of the Act, namely: (a) the determination of known sources of income; (b) proof of possession of assets disproportionate thereto; and (c) absence of satisfactory explanation by the accused.

13. Per contra, learned AGA submitted that at the stage of considering of discharge application and framing of charge that trial court is not expected to go for carrying out mathematical calculation of the discrepant amount and it is desirable that the learned trial court will place reliance of the amount calculated by the Investigating Agency on the basis of documents and only due to the fact that the amount discrepant is not a huge amount. The accused cannot be discharged.

14. Learned trial court has dismissed the discharge application after considering the grounds taken therein and evidence collected during investigation against revisionist at the stage of framing of charge roving inquiry into matter collected during investigation is not permitted. The trial court while framing of charge as to see whether there are sufficient material to proceed against the accused for said charges leveled against him.

15. The provisions of Section 13 of Prevention of Corruption Act, 1988 prior to the amendment of 2018 (Act 16 of 2018) which is invoked in the present case is being reproduced as under:

> *16. Subs. by Act 16 of 2018, S. 7 (w.e.f. 26-7-2018). Prior to substitution it read as:*
>
> *"(1) A public servant is said to commit the offence of*

criminal misconduct,-

> *(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or*
>
> *(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other be inadequate from any person whom he knows to have been, or to be, or to be any other person, any valuable thing without consideration or for a consideration which he likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or*
>
> *(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or*
>
> *(d) if he,-*
>
>> *(1) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage;or*

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.- For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to 7 years and shall also be liable to fine.

16. From perusal of aforesaid provisions, it appears that Section 13 of the Prevention of Corruption Act defines the offence of "criminal misconduct by a public servant. It penalised public officials to misuse their office, misappropriate property or mass wealth disproportionate to their known

source of income which is implies intentional and enriching oneself in illicit manner during the period of office which includes holding assets or pecuniary sources disproportionate to known source income that cannot be amounted for satisfactorily.

17. Learned counsel for the revisionist placed reliance on a judgment of the Hon'ble Supreme Court in **State of Tamil Nadu vs. R. Soundirarasu, (2023) 6 SCC 768**, wherein the Supreme Court set aside the Madras High Court order, whereby a former Motor Vehicle Inspector and his wife were discharged in a case from the charge of disproportionate assets. Hon'ble Supreme Court ruled that the court must only evaluate a prima facie case at the discharge stage without conducting mini trial or weighing evidence. The trial court had refused to discharge the accused. The High Court allowed the criminal revision petition and evaluated the individual explanations regarding income and tax returns. The Apex Court allowed the State appeal, holding that the High Court erred while deeply analyzing the defense material and explanations prematurely. The courts cannot conduct detailed inquiry or except defense explanations as gospel truth before the trial begins. The Supreme Court restored the criminal proceedings, directing the trial to proceed according to law. It was directed that the Special Court shall now proceed to frame charge against the accused persons in accordance with law and put them to trial. In the opinion of Apex Court, the circumstances emerging from the record of the case, prima facie, indicated the involvement of the accused persons in the alleged offence. Having regard to the materials on record, it cannot be said that the charge against the accused persons is groundless. There are triable issues in the matter. If there are triable issues, the court is not expected to go into the veracity of the rival versions. Hon'ble Court observed in Paragraphs 52, 64 and 80 as under.

> *"52. The provisions which deal with the question of framing of charge or discharge, relatable to: (i) a sessions trial or, (ii) a trial of warrant case, or (iii) a summons case, are contained in three pairs of Sections under the Code of Criminal Procedure. These are Sections 227 and 228 reply in so far as, the sessions trial is concerned; Sections 239 and 240 reply relatable to the trial of warrant cases; and Sections 245(1) and 245(2) reply in*

respect of summons case. The relevant provisions read as follows:

> *Section 227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the Accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the Accused, he shall discharge the Accused and record his reasons for so doing.*
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> *Section 228. Framing of charge.--(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the Accused has committed an offence which-*
>
>> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the Accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the Accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;*
>>
>> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the Accused.*

(2) Where the Judge frames any charge under Clause (b) of Sub-section (1), the charge shall be read and explained to the

Accused, and the Accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 239. When Accused shall be discharged.--If, upon considering the police report and the documents sent with it Under Section 173 and making such examination, if any, of the Accused as the Magistrate thinks necessary and after giving the prosecution and the Accused an opportunity of being heard, the Magistrate considers the charge against the Accused to be groundless, he shall discharge the Accused, and record his reasons for so doing.

Section 240. Framing of charge.--(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the Accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the Accused.

(2) The charge shall then be read and explained to the Accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 245. When Accused shall be discharged.--(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the Accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this Section shall be deemed to prevent a Magistrate from discharging the Accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

64. In Century Spinning and Manufacturing Co. Ltd. v. State of Maharashtra MANU/SC/0080/1971 : AIR 1972 SC 545, this

Court has stated about the ambit of Section 251(A)(2) of the Code of Criminal Procedure 1898, which is in pari materia with the wordings used in Section 239 of the Code of Criminal Procedure as follows:

> *It cannot be said that the Court at the stage of framing the charge has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the Accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in Section 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution.*

In para 15, this Court has stated as:

> *Under Sub-section (2), if upon consideration of all the documents referred to in Section 173, Criminal Procedure Code and examining the Accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the Accused. This Sub-section has to be read along with Sub-section (3), according to which, if after hearing the arguments and hearing the Accused, the Magistrate thinks that there is ground for presuming that the Accused has committed an offence triable under Chap. XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge*

> *against the Accused. Reading the two Sub-sections together, it clearly means that if there is no ground for presuming that the Accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges.*

> *80. Section 13(1)(e) of the Act 1988 makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the Accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the Accused was in possession of properties disproportionate to his known sources of income but the term "known sources of income" would mean the sources known to the prosecution and not the sources known to the Accused and within the knowledge of the Accused. It is for the Accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the Accused to give satisfactory explanation. The Accused cannot make an attempt to discharge this onus upon him at the stage of Section 239 of the Code of Criminal Procedure. At the stage of Section 239 of the Code of Criminal Procedure, the Court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless"*

18. Learned counsel for the revisionist had submitted that unless the essential ingredients of the offence under Section 13(1)(e) are established, the offence is not complete. In the present case, an absence of proof of known sources of the income of the revisionist and the prosecution has nowhere disclosed or specified the sources from which such income is alleged to have been derived. Hence, the prosecution case is incomplete at the inception and the revisionist was entitled to be discharged.

19. In the present case, S.P., Anti-Corruption Wing, UP, Lucknow has given a calculation chart of proportionate assets after analyzing the particulars of income and expenditure of the revisionist and has stated that

during the check period 01/04/2004 to 31/12/2004 is income from all valid sources has been found to be Rs.10,89,199/- whereas her total expenditure has been found to be Rs.12,59,014/- which is more than Rs.1,69,815/-.

20. In prosecution sanction order also this discrepant amount is shown as Rs.159,815/-. The sanctioning officer has stated that he has examined all the material produced before before him with regard to the allegation of discrepant assets of the employee, Sri Anoop Kumar Srivastava against whom open inquiry was conducted by the Anti-corruption Wing and thereafter FIR was lodged against him in Case Crime No. 24 of 2012, under Section 13(1)(e) read with section 13(2) PC Act at Police Station Hazratganj, Lucknow and after inquiry he has been chargesheeted for said offense. He has meticulously examined all the material collected during investigation and after recording his satisfaction regarding charges against him, he has granted sanction for prosecution for alleged offenses. It is not the case of the revisionist that the sanction order was not passed by the competent officer.

21. The mere fact that the discrepancy between income and expenditure was whittled down after investigation is significant but cannot found a sole ground to discharge the revisionist. Similarly, the fact that discrepancy is a small fraction of income of the revisionist is also not ground to discharge him from alleged charges.

22. On perusal of sanction order, it cannot be said that the same has been passed by the competent authority without application of mind. During trial of the case, the revisionist shall have opportunity to prove every single amount received by him from valid sources through the testimony of witnesses and by also filing contemporaneous document and intimation to the government. There are relevant rules with regard to investment, lending and borrowing with regard to a government servant and he has to prove to the satisfaction of the court. He will have to prove to the satisfaction of the court that any amount borrowed by him from a friend or relative was within purview of the limit prescribed in the relevant rules and was duly intimated in prescribed form to the government or to the officer authorized in behalf. However, at this stage of framing of charge,

there is no scope of such calculation and proof.

23. In the case of **Amit Kapoor Vs. Ramesh Chander and Others (2012) 9 SCC 460**, Hon'ble Supreme Court held that even in the case of strong suspicion, charge can be framed. Paragraph 19 of the said judgment is quoted as under:-

> *"19. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*
>
> > *1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*
> >
> > *2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients*

of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge.

Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to

> *decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*
>
> *14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*
>
> *15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist."*

24. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that an accused had committed an offense, which, if put to trial could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of proof of guilt is not to be applied at that stage.

25. In the present case conclusions of inquiry report preceeding to lodging of the FIR, evidence collected during investigation, raised a serious doubt and a grave suspicion against the revisionist regarding his complicity in the offense, which leads to framing of charge against him to put him on trial for alleged offense.

26. I find no illegality, irregularity or perversity in the impugned order passed by learned court below whereby discharge application filed by the revisionist has been dismissed by learned Special Judge,.

27. Consequently, the revision is **dismissed**.

(Ram Manohar Narayan Mishra,J.)

April 20, 2026
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