APHC010468622007

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3368]**
(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY-SIX

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL No: 1077/2007

Between:

1. SHAIK RAHAMAN,, S/O. LATE ABDUL SATTUR, FORMERLY ASST.ENGINEER, AP STATE HOUSING CORPORATION LTD., JAGGAIAHPET, KRISHNA DISTRICT, R/O. NEAR LAKARAM CHERUVU,

...APPELLANT

AND

1. THE STATE OF ABC REP BY SPL PP, Special Public Prosecutor for ACB Cases, High Court of A.P., Hyderabad.

...RESPONDENT

Counsel for the Appellant:

1. BADETI VENKATA RATHNAM

Counsel for the Respondent:

1. S.SYAM SUNDER RAO SC cum Spl P.P. For ACB

The Court made the following:

APHC010063982007

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3368]**
(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL No: 1463/2007

Between:

1. THE STATE OF A.P., A.C.B., VIJAYAWADA RANGE, THROUGH THE DISTRICT INSPECTOR, A.C.B., VIJAYAWADA RANGE, VIJAYAWADA. REP. BY THE S.C-CUM-SPL.PUBLIC PROSECUTOR FOR ACB CASES, HIGH COURT OF A.P., HYDERABAD. **...APPELLANT**

AND

1. SRI BHAGYALIKAR ARJUNA RAO ANOTHER, S/O RUKMAN RAO, FORMERLY DY. EXECUTIVE ENGINEER A.P.STATE HOUSING CORPORATION LTD., VIJAYAWADA.

2. SRI SHAIK RAHAMAN, S/O LATE ABDUL SATTAR, FORMERLY ASST. ENGINEER A.P.STATE HOUSING CORPORATION LTD., JAGGAIAHPET, VIJAYAWADA. (SINCE CONVICTED, RESPONDENT NO.2 IS NOT NESSARY PARTY)

...RESPODENT(S):

Counsel for the Appellant:
1. S.SYAM SUNDER RAO SC cum Spl P.P. For ACB

Counsel for the Respondent(S):
1. VENKATA DURGA RAO ANANTHA

The Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CRIMINAL APPEAL Nos.1077 & 1463 OF 2007

O R A L C O M M O N J U D G M E N T:

1. **Criminal Appeal No.1077 of 2007** is preferred by the appellant/Accused No. 2, challenging the judgment dated **26.07.2007** in **C.C. No.12 of 2004** on the file of the learned Special Judge for SPE and ACB Cases at Vijayawada.The appellant was convicted for the offence under **Section 12 of the Prevention of Corruption Act, 1988** (for short, "the Act") and sentenced to undergo simple imprisonment for one (1) year and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default of payment of fine, to undergo simple imprisonment for three (3) months.

2. **Criminal Appeal No.1463 of 2007** is preferred by the State challenging the above judgment rendered by the learned Special Court, whereby the respondent/Accused No. 1 was found not guilty of the offences under **Sections 7 and 13(1)(d) read with Section 13(2) of the Act**.

CASE OF THE PROSECUTION:

3. The case of the prosecution is that the complainant (LW1) was the owner of a rice mill at Jaggaiahpet. He leased out the godown of the rice mill to the Andhra Pradesh State Housing Corporation Limited, Vijayawada, on a monthly rent of Rs.3,000/-. He later intimated the officials that he had alienated the

godown in favour of S.Jayarama Chandra Murthy (PW2).Therefore, he requested the officials to vacate the godown and hand over possession to PW2 by July, 2002. However, the premises were not vacated as requested.

4. The complainant approached Accused No.1 and requested him to issue a cheque for Rs.24,000/- towards arrears of rent for eight (8) months, payable from November 2001 to July 2002. Accused No.1 allegedly demanded a sum of Rs.10,000/- as gratification other than legal remuneration for issuing the said cheque. Accused No.1 further directed the complainant to approach Accused No.2, who was working as an Assistant Engineer in the Andhra Pradesh State Housing Corporation Limited, Jaggaiahpet, and to pay the bribe amount to him so that the cheque would be issued.

5. The complainant was not willing to pay the bribe amount.He approached PW6, the Deputy Superintendent of Police, ACB, and submitted Ex.P14 report on 03.10.2002. PW6, after verification, registered a case on the same day in Crime No. 36/ACB-RCT-VJA/2002 of ACB Vijayawada for the offence under Section 7 of the Act *vide*Ex.P15.

6. On 05.10.2002, PW6 conducted pre-trap proceedings in the presence of mediators under Ex.P9. Thereafter, at about 5:30 a.m., the trap party along with the complainant proceeded to the office-cum-residence of Accused No.2 at Jaggaiahpet. The complainant was instructed to approach Accused No.2 and, if

any demand was made or the bribe amount was accepted, to give a pre-arranged signal.

7. The complainant went to the house at about 7:30 a.m. but returned within ten minutes stating that Accused No.2 had gone elsewhere and would return by lunchtime.The trap party waited till about 4:00 p.m. Accused No.2 returned at about 4:00 p.m., whereupon the complainant again approached him.

8. In pursuance of the alleged demand, Accused No.2 accepted the bribe amount of Rs.10,000/- from the complainant. The complainant then gave the pre-arranged signal. The trap party immediately entered the premises and conducted chemical tests on the hands of Accused No.2, which gave a positive results. Accused No.2 produced the tainted money from the right-side trouser pocket. The mediators verified the currency numbers with those noted in Ex.P9.

9. Subsequently, the complainant was called into the room, and the versions of the complainant and Accused No.2 were recorded under Ex.P11 (post-trap proceedings). After completion of the investigation and obtaining sanction for prosecution against Accused No.2, PW7 filed the charge sheet before the learned Special Court.

10. The learned Special Court charged Accused No.1 for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Act, on the ground that, while working as an Executive Engineer in the Andhra Pradesh State Housing

Corporation Limited, Jaggaiahpet, he, on 03.10.2002, demanded a bribe of Rs.10,000/- from the complainant for doing an official favour, i.e., issuance of a cheque towards arrears of rent, and in pursuance of the said demand, on 05.10.2002, made a further demand and accepted the said amount of Rs. 10,000/- through Accused No.2, thereby committing the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act.

11. Accused No.2 was charged for the offence under Section 12 of the Act on the ground that, while working as an Assistant Engineer in the Andhra Pradesh State Housing Corporation Limited, Jaggaiahpet, he, on 03.10.2002, assisted and aided Accused No.1 in accepting an amount of Rs. 10,000/- from the complainant on 05.10.2002 as gratification other than legal remuneration for doing an official favour, i.e., issuance of a cheque towards arrears of rent, which is punishable under Section 7 of the Act, and thereby committed the offence under Section 12 of the Act.

12. Both the accused denied the charges and claimed to be tried.

EVIDENCE FOR THE PROSECUTION:

13. The prosecution in order to substantiate its case, examined PWs 1 to 9 and marked Exs. P1 to P18 and MOs 1 to 8.

14. The accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing in the prosecution evidence, which they denied as false.

15. No witnesses were examined on behalf of the defence; however, Ex.D1 was marked. Ex.X1 was also marked through PW9, relating to permission granted to him to depose before the Court.

FINDING OF THE SPECIAL COURT:

16. Upon appreciation of the evidence, the learned Special Court found Accused No. 1 not guilty of the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Act, holding that the prosecution failed to prove the demand. However, Accused No. 2 was found guilty under Section 12 of the Act and was convicted and sentenced as stated above.

17. Aggrieved thereby, Criminal Appeal No.1077 of 2007 was filed by Accused No. 2, and Criminal Appeal No.1463 of 2007 was filed by the State.

18. Since both appeals arise out of the same judgment, they are being disposed of by this common judgment.

19. The point that arises for consideration in this Criminal Appeal is as under:

"Whether the judgment of the learned Special Court is sustainable in law"?

ANALYSIS:

20. The learned counsel for the appellant/Accused No.2 would contend that the complainant in the case died during the pendency of the trial. According to the prosecution, the complainant submitted Ex.P14 report to PW6. The specific case of the prosecution is that Accused No.1 demanded the complainant to pay gratification other than legal remuneration for issuing a cheque for Rs. 24,000/- towards arrears of rent for the period from November, 2001 to July, 2002. It is further the case of the prosecution that Accused No.1 instructed the complainant to pay the demanded bribe amount to Accused No.2 on his behalf, and thereafter the cheque would be issued.

21. The evidence on record would show that the complainant had alienated the godown in favour of PW2 in February, 2001 and later executed a sale deed in November, 2001.He also intimated the same to the Andhra Pradesh State Housing Corporation Limited, Vijayawada, and requested them to vacate the premises. The evidence on record would further show that a cheque earlier drawn in the name of the complainant by Accused No.1 was cancelled, as the property had already been alienated and the rent was payable to the subsequent purchaser, i.e., PW2.

22. According to the prosecution, Accused No.1 made the demand in the month of July, 2002. However, the evidence on record establishe that the cheque already drawn had been cancelled prior to the alleged demand, as the property

had been alienated by the complainant. Therefore, the question of Accused No.1 making a demand for gratification other than legal remuneration for issuing a cheque in favour of the complainant, who was no longer the owner of the property, and that too for the period subsequent to the sale, is highly improbable.

23. Further, in the light of the death of the complainant, there is no other evidence on record to prove the alleged demand made by Accused No.1. Therefore, the learned Special Court found Accused No.1 not guilty of the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Act.

24. There is no evidence on record to show that Accused No.2 received the bribe amount from the complainant in pursuance of any instructions issued by Accused No.1. Admittedly, the complainant did not approach Accused No.1 on 03.10.2002 or 05.10.2002 to establish that on those dates Accused No.1 made any demand and directed him to approach Accused No.2 and pay the amount.

25. There is also no evidence on record to prove that Accused No. 1 instructed Accused No.2 to receive the amount from the complainant for doing the official favour, or in other words, to accommodate Accused No.1 by receiving the said amount. However, the Special Court held that the complainant offered money to Accused No.2 and that he received the same to instigate Accused No.1 to perform the official favour, and therefore held him guilty of the offence under Section 12 of the Act.

26. The learned counsel would vehemently argue that it is the specific case of the prosecution that Accused No.1 instructed the complainant to pay the amount to Accused No.2 for doing the official favour. Accordingly, the complainant approached the office-cum-residence of Accused No.2 on 05.10.2002 at about 4:15 p.m. to pay the amount. Therefore, it is alleged that Accused No.2 received the amount as per the instructions of Accused No.1. However, this version of the prosecution not proved.No evidence placed on record in support of the same.

27. In view of the death of the complainant, there is no other evidence on record enabling the Court to conclude that Accused No.1 instructed the complainant to pay the amount to Accused No.2, or that Accused No.2 received the amount on behalf of Accused No. 1 with the knowledge that it was paid as gratification other than legal remuneration, thereby facilitating Accused No.1. In the absence of such evidence, the essential ingredients of abetment under Section 12 of the Act are not made out.

28. In support of his arguments, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in ***Central Bureau of Investigation v. V.C. Shukla and Others***[1].

29. Sri Syam Sunder Rao, learned Standing Counsel–cum- Special Public Prosecutor for ACB appearing for the respondent-State, would argue that the evidence on record discloses that MO1 tainted money was recovered from the

[1] AIR (1998) SCC 1406

possession of the accused A2. The evidence on record would establish that he received the said amount from the complainant to accommodate accused A1. Therefore, the learned Special Court convicted accused A2 for the offence under Section 12 of the Act, though accused A1 was acquitted of the offences under Sections 7 and 13(1)(d) read with 13(2) of the Act. He would further argue that the Hon'ble Apex Court in ***Neeraj Dutta vs. State (Government of NCT of Delhi)***[2] held that the essential condition to prove the offence during trial is that the accused had accepted gratification; therefore, it would constitute a case of acceptance under Section 7 of the Act.

30. The learned Special Court erroneously found accused A1 not guilty of the offences under Sections 7 and 13(1)(d) read with 13(2) of the Act, though the evidence of the mediators and the Investigating Officer would establish that the complainant presented Ex.P14 report stating that accused A1 made a demand for gratification other than legal remuneration. The evidence on record would show that the rent amount was not paid to the complainant; therefore, he approached accused A1 for payment of the rent amount. At that time, accused A1 made the demand and asked the complainant to give the amount to accused A2. Accordingly, on 05.10.2002, the complainant went to the office–cum-residence of accused A2 and paid the MO1 amount, which was accepted by accused A2. Therefore, the evidence on record would establish that accused A2

[2] (2023) 4 SCC 731

received the amount in pursuance of the demand made by accused A1. Hence, the prosecution successfully proved the offence against accused A2 and also established the case against accused A1, but the learned Special Court erroneously acquitted accused A1.

31. The learned counsel for accused A1 would submit that it is the specific case of the prosecution that the accused made a demand for gratification other than legal remuneration for doing an official favour, i.e., issuance of a cheque towards arrears of rent from November 2001 to July 2002. The evidence on record would establish that the complainant sold the property to PW2 in February 2001 and executed the sale deed in November 2001. The evidence would further establish that an earlier cheque was prepared for payment of arrears of rent, but it was cancelled by the department in light of the letter addressed by the complainant intimating that he had sold the property to PW2 and executed the sale deed. Hence, the question of payment of rent to the complainant from November 2001 to July 2002 does not arise.It would show that no official favour was pending with accused A1 so as to make the alleged demand. However, there is no evidence on record that the complainant approached accused A1 either on 03.10.2002 or on 05.10.2002 for issuance of the cheque.

32. It is further contended that, in the absence of evidence establishing that accused A1 made a demand for illegal gratification, the offence under Sections 7 and 13(1)(d) read with 13(2) of the Act are not attracted against accused A1 in

light of the judgment of the Hon'ble Apex Court in ***Neeraj Dutta case*** (referred supra), as the prosecution must establish both ingredients, namely demand and acceptance of the amount.Hence, the learned Special Court rightly found accused A1 not guilty of the said offences, and there are no grounds to interfere with the judgment.

33. The case of the prosecution is that the complainant (LW1) was the owner of a godown at Jaggaiahpet Village. He leased out the said godown to the Andhra Pradesh Housing Corporation Limited, Vijayawada, on a monthly rent of Rs.3,000/-. There is no dispute with regard to this fact.

34. The evidence on record, particularly that of PW3, Junior Assistant in the Andhra Pradesh Housing Corporation Limited, Vijayawada, would show that accused A2 submitted the M-book along with a voucher containing the signature of the house owner, and accused A1 endorsed in the M-book to pass an order to pay Rs.24,000/- to the complainant on 27.08.2002, which is much prior to 03.10.2002. The evidence of PW3 would also establish that a cheque was prepared by him on 27.08.2002 for Rs.24,000/- in the name of the complainant. However, it was cancelled on the same day, i.e., 27.08.2002, as per Ex.P5, since the complainant himself had submitted a letter on 08.01.2002 informing that he had sold the godown at Jaggaiahpet. Ex.P5 would show that the complainant sold the godown to PW2 in February 2001 and executed a registered sale deed in favour of PW2 in November 2001. Therefore, the ownership and title of the

godown stood transferred to PW2 by November 2001. Ex.D1 is a copy of the said sale deed.

35. Thus, this evidence would establish that the complainant was no longer the owner of the godown from November 2001 onwards. Consequently, he was not entitled to claim rent from November 2001 onwards, as the rent is payable to the new owner, i.e., PW2. The evidence of PW3 further disclose that accused A1 cancelled the cheque on 27.08.2002 on account of the letter (Ex.P5) submitted by the complainant. Therefore, the case of the prosecution that the complainant approached accused A1 in October 2002 seeking payment of rent from November 2001 to July 2002 becomes doubtful.

36. Unfortunately, the complainant died during the pendency of the trial. No other evidence is forthcoming to prove the alleged demand made by accused A1. There is no explanation as to how accused A1 could again draw a cheque in the name of the complainant after 27.08.2002, when the earlier cheque was cancelled on the ground that the complainant was no longer the owner of the property. In these circumstances, the learned Special Court rightly held that there is no evidence on record to prove the demand made by accused A1 for illegal gratification.

37. Coming to the case against accused A2, it is the specific case of the prosecution that accused A1 made the demand for illegal gratification and

instructed the complainant to approach accused A2 to pay the amount. It is also alleged that accused A1 informed accused A2 to receive the amount. However, it is pertinent to note that it is not the case of the prosecution that the complainant met accused A1 on 03.10.2002 or 05.10.2002 for payment of the demanded amount. There is no evidence to establish that prior to 03.10.2002, the complainant approached accused A1. As already noted, except the statement allegedly made to the Investigating Officer, there is no evidence to show any such demand.

38. Unfortunately, the complainant died during the trial of the case. The learned Special Court rightly observed that the death of the complainant would not, by itself, affect the prosecution case, provided that other evidence on record is trustworthy and reliable so as to establish the demand and acceptance. However, the learned Special Court ultimately found that there is no other evidence on record which is trustworthy and reliable to prove the demand.

39. Therefore, in the absence of any evidence to prove that accused A1 made a demand prior to 03.10.2002, and there is also no material to establish that accused A1 instructed the complainant to pay the amount to accused A2 on his behalf, or that accused A2 received the amount to accommodate accused A1, at the offence under Section 12 of the Act is not made out.

40. As rightly contended by the learned counsel for the appellant/accused A2, the presumption under Section 20 of the Act has no application to an offence under Section 12 of the Act; it applies only to offences under Section 7 of the Act. As discussed above, the prosecution failed to prove the essential ingredient of demand required to establish an offence under Section 7 of the Act.

41. It is the case of the prosecution that, at the time of the alleged demand, accused A1 instructed the complainant to give the amount to accused A2 and also informed accused A2 to receive the amount on his behalf. However, this allegation has not been proved by the prosecution.

42. Admittedly, the complainant did not approach accused A1 either on 03.10.2002 or on 05.10.2002. Therefore, no inference can be drawn that accused A1 directed the complainant to pay the amount to accused A2 or requested accused A2 to receive the amount on his behalf, even for the sake of argument, to conclude that accused A2 received the amount on 05.10.2002 in such circumstances.

43. The learned Special Court, however, opined that accused A2 received the amount paid by the complainant in order to abet accused A1 in committing the offence under Section 7 of the Act, as if accused A2 had voluntarily received the amount when offered by the complainant with a promise to persuade accused A1

to perform the official favour, thereby treating it as a case of ‘acceptance’ under Section 7 of the Act.

44. However, the specific case of the prosecution is one of “obtainment” as contemplated under Section 7 of the Act. There is no evidence on record to lead the Court to conclude that accused A2 received the amount in pursuance of any demand made by accused A1. It is also not the case of the prosecution that accused A2, on his own volition, received the amount with an intention to ensure that accused A1 would extend any official favour to the complainant.

45. The Hon’ble Apex Court, in the ***Central Bureau of Investigation case*** (referred supra), considered Section 12 of the Act and Section 107 of the IPC. The Hon’ble Apex Court held that, as per Section 107 IPC, a person abets the doing of a thing when he does any of the acts mentioned in the following three clauses:

i. instigates any person to do that thing; or

ii. engages with one or more other persons in any conspiracy for the doing of that thing; or

iii. intentionally aids, by any act or illegal omission, the doing of that thing.

46. The Hon’ble Apex Court further observed that, so far as the first two clauses are concerned, it is not necessary that the offence instigated should

have been committed. For understanding the scope of the word “aid” in the third clause, it would be advantageous to refer to Explanation 2 to Section 107 IPC, which reads as follows:

> “Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

47. It is thus clear that under the third clause, when a person abets by aiding, the act so aided should have been committed in order to make such aiding an offence. In other words, unlike the first two clauses, the third clause applies only to cases where the principal offence is actually committed.

48. In the case on hand, the specific case of the prosecution is that the abetment is by aiding.Therefore, it does not fall under the first two clauses mentioned above.

49. The evidence on record does not make out any case against accused A1 for having committed the offences under Sections 7 and 13(1)(d) read with 13(2) of the Act.

50. In similar circumstances, the Hon’ble Apex Court, in the above-referred judgment, observed that the question of committing an offence under Section 12 of the Act does not arise.

51. Therefore, when it is the specific case of the prosecution that accused A2 abetted the offence under Section 7 of the Act allegedly committed by accused A1 by receiving the amount from the complainant on the instructions of accused A1, when the prosecution failed to prove the commission of the offence under Section 7 of the Act, no case is made out against accused A2 for the offence under Section 12 of the Act. This is particularly so as the prosecution case does not fall under the first two clauses of Section 107 IPC, as discussed above.

52. Unfortunately, the learned Special Court deviated from the case of the prosecution and made out a different case by invoking the ingredients of the first two clauses under Section 107 IPC, which is neither the case of the prosecution nor supported by the evidence on record. Accordingly, the learned Special Court committed an error apparent on the face of the record. Therefore, the judgment of the learned Special Court is not sustainable in law insofar as it relates to appellant/accused A2.

53. So far as the appeal preferred by the State challenging the acquittal of accused A1 is concerned, it has already been discussed that no evidence is forthcoming on record. On the other hand, the circumstances, particularly the evidence of PW3 and Ex.P5, would establish that the complainant had alienated the property as early as February 2001 in favour of PW2 and subsequently executed a sale deed under Ex.D1 in November 2001.The same was

communicated to the department by the complainant himself under Ex.P5, requesting the department to vacate the godown.

54. Therefore, the cheque which was earlier drawn for payment of rent from November 2001 to July 2002 was cancelled, as the rent had to be paid to the new owner, i.e., PW2. In such circumstances, the case of the prosecution that the complainant subsequently approached accused A1 with a request to issue cheques in his favour is highly doubtful and cannot be accepted.

55. Accordingly, the learned Special Court rightly concluded that the prosecution failed to prove the demand made by accused A1 for gratification other than legal remuneration. Hence, no case arises under Section 7 of the Act, in view of the judgment of the Hon'ble Apex Court referred to above, which mandates that the prosecution must establish both demand and acceptance.The learned Special Court rightly found accused A1 not guilty of the offences under Sections 7 and 13(1)(d) read with 13(2) of the Act.

56. In that view of the matter, this Court does not find any ground to interfere with the judgment of the learned Special Court, as the view taken by the learned Special Court is a possible and reasonable view based on the facts and circumstances of the case. It is a settled principle of law that when two views are possible from the evidence on record, and the view taken by the trial court is a plausible one, the appellate Court shall not interfere with such findings.

57. In that view of the matter, the appeal filed by the State fails.

58. In the light of the foregoing discussion, Criminal Appeal No. 1077 of 2007, filed by appellant/accused A2, is allowed. The order of conviction under Section 12 of the Prevention of Corruption Act, 1988, recorded by the learned Special Court, is set aside. The appellant/accused A2 is hereby acquitted for the offence under Section 12 of the Prevention of Corruption Act, 1988. The fine amount, if any, paid by the appellant/accused A2 shall be refunded to him in accordance with law.

59. The Criminal Appeal No. 1463 of 2007, filed by the State challenging the acquittal of accused A1, is dismissed.

60. This common judgment shall be certified to the learned Special Court, as per Section 405 Cr.P.C.

As a sequel thereto, interlocutory applications, if any, pending in these Criminal Appeals shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI.

06.04.2026

Cbn

THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

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CRIMINAL APPEAL Nos:1007 & 1463 OF 2007

Date: 06.04.2026

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