IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.393 of 2025

Arising Out of PS. Case No.-167 Year-2015 Thana- PATNA COMPLAINT CASE District-Patna

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Kanak Kumari S/O Shri Anil Singh R/O Chaudhary Niwas, P.S.- Sultanganj, Dist.- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Satyendra Kumar Singh S/O Sudeshwar Singh R/O 301, Dayanand Complex, Nehru nagar, P.s.- Patliputra, Patna- 800013

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
Mr.Shambhu Shankar Thakur, Advocate

For the State : Mr.Braj Kishore Pd., APP

For the O.P. No. 2 : Mr. Niraj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 14-08-2026

The instant revision is directed against the judgment dated 15.01.2025 passed in Criminal Appeal No. 91 of 2023 passed by the court of learned Additional Sessions Judge-V, Patna, whereby and whereunder the learned appellate court partly upheld the judgment of conviction and modified the order of sentence dated 03.06.2023 passed by learned Additional Chief Judicial Magistrate-X, Patna in Complaint Case No. 167 of 2015 by which the learned trial court convicted the petitioner/appellant for the offence under Section 138 of

Negotiable Instruments Act (hereinafter referred as 'the N.I. Act') by sentencing her to undergo imprisonment for six months and further imposed a compensatory fine of Rs.12,70,000/- and in default thereof further simple imprisonment of one month. The learned appellate court modified the order of sentence by setting aside the imprisonment and reducing the compensatory fine to Rs.10,00,000/- with condition to undergo imprisonment of one month in case of failure in paying said fine,

02. Briefly stated, the facts emerging from the record are that the opposite party no. 2 filed Complaint Case No. 167 of 2015 against the petitioner and her husband Anil Singh for commission of offence under Sections 406, 467, 468, 471, 120B of the Indian Penal Code and Section 138 of the N.I. Act. The complainant-opposite party no. 2 is said to be a friend of the petitioner and her husband Anil Singh. The petitioner and her husband were in need of money on 15.01.2014 to meet their business need as well as for other requirements and on their demand, the opposite party no. 2 extended a friendly loan to the tune of Rs.6,35,000/- to the petitioner and her husband on their undertaking to repay the same within six months. This amount was paid by opposite party no. 2 in three installments. But the petitioner and her husband did not return the amount of

Rs.6,35,000/- in six months as promised by them. However, after much persuasion, the petitioner and her husband agreed to return the money and this petitioner issued an account payee cheque No. 455502 dated 20.11.2014 of State Bank of India, Mahendru Branch, Ashok Raj Path, P.S. Pirbahore, Patna. When the opposite party no. 2 presented the cheque in his account, it was dishonoured and returned with a bank memo dated 27.11.2014 with endorsement of 'insufficient fund'. Thereafter, the complainant gave a legal notice dated 20.12.2014 to the petitioner and her husband requesting them to make payment of the amount of Rs.6,35,000/- taken as friendly loan. This notice was replied by the petitioner through Advocate and in reply it has been stated that the petitioner lost the aforesaid dishonoured cheque on 19.12.2013 and a Sanha was lodged before Sultanganj Police Station on 20.12.2013 and her bank was also informed to stop payment. Thus, the opposite party no. 2 claimed in his complaint petition that the contents of the reply to legal notice showed the intention of cheating and fraud by the petitioner and her husband and under a conspiracy, the cheque was issued by the petitioner for which they claimed to have lodged a Sanha. Thus, from the very beginning the petitioner and her husband had intended to cheat the opposite party no. 2

on the pretext of taking a friendly loan, getting the said amount of Rs.6,35,000/- from the opposite party no. 2 and misappropriating the same and dishonestly converting the money of the opposite party no. 2 to their own use. Thus, the petitioner and her husband cheated and deceived the complainant. The petitioner was summoned to face trial under Section 138 of the N.I. Act. The substance of accusation for Section 138 of the N.I. Act was explained to the petitioner on 10.11.2015 to which she pleaded not guilty and claimed to be tried.

03. After recording the evidence of both sides, the learned trial court of Additional Chief Judicial Magistrate-X, Patna vide its judgment dated 03.06.2023 convicted the petitioner for the charge under Section 138 of the N.I. Act and by the order of the same date, sentenced the petitioner for a term of imprisonment of six months with compensation amount of Rs.12.70,000/-as fine. In default of fine, the petitioner was ordered to undergo simple imprisonment of one month.

04. Being aggrieved by the judgment of conviction and order of sentence, the petitioner preferred an appeal bearing Criminal Appeal No. 91 of 2023 in the Sessions Court and vide judgment dated 15.01.2025 in Criminal Appeal No. 91 of 2023,

the learned appellate court upheld the judgment and conviction under Section 138 of the N.I. Act. However, the learned appellate court modified the order of sentence of imprisonment and payment of fine passed by the learned trial court in the following manner:-

> *"(a) The learned appellate court set aside the order of sentence for simple imprisonment for a period of six months, and;*
>
> *(b) The order of learned trial court sentencing the petitioner to pay fine of Rs.12,70,000/- was reduced to the amount of Rs.10,00,000/- and total fine amount was directed to be paid to opposite party no. 2 within three months from the date of the order. The default sentence was not disturbed that in case of default the petitioner was to undergo simple imprisonment for a period of one month."*

Thus, the learned appellate court partly allowed and disposed of the appeal. Against the judgment of appellate court, the petitioner has come before this Court in the present revision petition.

05. Learned counsel for the petitioner submitted that the impugned judgment is bad in law as well as on facts. The learned subordinate courts have not correctly appreciated the evidence of the complainant and also of the defence. The learned subordinate courts have not applied their judicial mind to the facts and circumstances of the case as well also the provisions of law. The learned subordinate courts failed to consider that there was no legally enforceable debt or liability for which cheque in question was purported to have been issued by the petitioner. The learned subordinate courts erred on the point of their presumption with respect to discharge of liability on the part of the petitioner and thus, this finding is bad in the eyes of law as there was no legally enforceable debt. The learned subordinate courts failed to consider properly the presumption under Sections 118 and 139 of the N.I. Act which is a rebuttable presumption. The learned subordinate courts failed to appreciate that once the petitioner has established her defence, the burden shifted to the opposite party no. 2/complainant to establish his case beyond a reasonable doubt. From the evidence brought on record by the complainant/opposite party no. 2, it was necessary for him to

establish that he had given a friendly loan but there was no clinching evidence still, the learned subordinate courts did not consider this aspect. Once the petitioner discharged the onus and rebutted the presumption under Section 139 of the N.I. Act, it was for the complainant/opposite party no. 2 to prove his case beyond any reasonable doubt considering the criminal nature of provision under Section 138 of the N.I. Act. But the opposite party no. 2 failed to prove his case and learned subordinate courts failed to appreciate that though the petitioner has discharged her onus and rebutted the presumption under Section 139 of the N.I. Act, the opposite party no. 2 did not prove his case beyond reasonable doubt.

06. Learned counsel for the petitioner next submitted that it is the case of the petitioner from very beginning that the cheque in question was lost for which Sanha has been registered and said Sanha has been brought on record as Ext. D(1). Thereafter, the petitioner gave instructions to her bank for stopping payment of the cheque in question, i.e., cheque no. 455502 and the document in this regard has been marked as Ext. D 3/1. Learned counsel further submitted that the learned subordinate courts also failed to take into consideration the return memo, Ext. 2, which neither bore any

signature nor seal of the bank but this fact was not considered. Even the cheque in question had never been sent to the bank of the petitioner and therefore, her bank had not made any endorsement over the cheque in question.

07. Learned counsel for the petitioner further submitted that the Hon'ble Supreme Court in the case of ***Dasrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel***, ***AIR 2022 SC 4961*** held that the cheque must be issued for a legally enforceable debt on the date of maturity or presenting for it to constitute a violation of under Section 138 of the N.I. Act further also in the case of ***Krishna Janardhan Bhat Vs. Dattatraya G. Hegde***, ***AIR 2008 SC 1325*** has held that the existence of legally recoverable debt is not a matter of presumption under Section 139 of the N.I. Act. In the present case, the opposite party no. 2 failed to establish that he had any legally enforceable debt at the time of refusal of encashment. Learned counsel also relied on another decision of Hon'ble Supreme Court in the case of ***N. Vijay Kumar Vs. Vishwanath Rao N., MANU/SC0541/2025*** wherein the Hon'ble Supreme Court held that once such defence is established on part of the accused, the burden shifts upon the complainant to prove his case beyond reasonable doubt and if the complainant fails to

discharge this burden, the charge under Section 138 of the N.I. Act could not stand. Thus, learned counsel submitted that the impugned judgment resulted in the miscarriage of justice and the same needs to be interfered with by this Court by setting aside the judgments and orders of the learned subordinate courts.

08. Learned counsel appearing on behalf of the opposite party no. 2 vehemently contended that there is no merit in the present revision petition. The defences taken by the petitioner are completely frivolous and unsustainable. The learned subordinate courts considered these defences and rejected the same. Once a cheque has been issued, the presumption is that it is issued for discharge of liability and unless the person issuing the cheque rebutted this presumption, onus would not shift to the complainant. Learned counsel further submitted that the return memo is a document of Punjab National Bank and it contains the seal of the bank at the top on the right hand side. Learned counsel further submitted that there is initial of the bank official at the bottom right and date has also been stamped which is 14.11.2014. Learned counsel further submitted that it is wrong to say that the cheque was never presented for encashment as the return memo shows it was

returned for 'insufficient fund' and not on account of 'stop payment'.. The cheque is on record and it is duly singed by the petitioner and unless it was presented before the banker of the petitioner, the banker of the opposite party no. 2 could not have issued the return memo. Learned counsel further submitted that the learned subordinate courts have discussed each and every aspect of the matter at length and thereafter recorded a concurrent finding so far as the conviction of the petitioner is concerned. However, the learned appellate court took a lenient view and set aside the order of sentence of the petitioner and even reduced the fine which is compensatory in nature. The revisional court could not sit as a court of second appeal for re-appreciating the facts to take a different view from the same material on which finding has already been recorded by the two courts against the petitioner. The revisional court could not intervene in the matter unless there was manifest irregularity or illegality or a case of impropriety or perversity. Now in the present revision petition, the petitioner has failed to show any such illegality or irregularity or impropriety, the impugned judgment either of the learned appellate court or of the learned trial court need no interference in this revision petition and the same be affirmed by this Court.

09. I have given my thoughtful consideration to the rival submission of the parties.

10. At the outset, this Court would like to remind itself about the scope of revisional jurisdiction and its inherent limitations while exercising the power under Sections 438/442 of BNSS which read as under:-

> ***"438. Calling for records to exercise powers of revision. --*** *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.*
>
> *Explanation.-All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 439.*

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

"442. High Court's powers of revision.-- *(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 427, 430, 431 and 432 or on a Court of Session by section 344, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 433.*

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by advocate in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of

conviction.

(4) Where under this Sanhita an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Sanhita an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

The Court exercises its revisional jurisdiction to see the correctness, illegality or impropriety of any order passed by the inferior criminal court but this discretion would be exercised only within the four corners of the aforesaid provisions when there has been miscarriage of justice. While exercising the revisional jurisdiction the court does not act like an appellate court and is only concerned with illegality, impropriety or correctness of the finding or conclusion of any consideration of facts and any re-appreciation of evidence by the revisional court is forbidden unless there appears some perversity or manifest illegality in consideration of the facts or evidence. Further, the revisional court should refrain from substituting its conclusion on an elaborate consideration of evidence and findings of the subordinate courts could not be reversed and substituted solely on the ground that an alternative view is possible on the facts of the case. Recently, the Hon'ble Supreme Court in the case of ***Kuntegowda vs Thurubaiah, 2026 INSC 790*** in paragraph 7.3 has held as under:-

> *"7.3 The contours for exercise of revisional jurisdiction has been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:*
>
> *i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.*
>
> *ii. The lower court has passed the impugned order after considering an immaterial or irrelevant material or no material at all.*
>
> *iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously."*

11. From the discussion made on behalf of the

parties and the perusal of record show, the signature of the petitioner on the cheque is not in dispute. The petitioner admits her signature on the cheque though she has taken a defence that she misplaced the cheque and a sanha was registered in the concerned police station. Now the witnesses examined on behalf of the complainant/opposite party no. 2 have all stated about the accused/petitioner handing over a cheque to opposite party no.2/complainant. The same witnesses have also deposed about the complainant/opposite party no. 2 giving a loan to the accused/petitioner for an amount of Rs.6,35,000/- in three installments. The learned trial court has taken note of this fact and doubted the version of the petitioner and the learned appellate court has also not taken a different view from the learned trial court. It appears the petitioner gave an informatory application to the SHO of Sultanganj Police Station about missing of her signed cheques 19.12.2013 while going from her house to the market. But in her deposition she stated about losing of entire cheque book out of which two cheques were signed. Further, no witness has been examined of the police station so as to conclusively prove about receipt of the informatory application in the police station. So filing of informatory application itself appears doubtful and as a consequence, the story of missing of cheques also comes within the ambit of grave doubt. Both the learned subordinate courts have taken a consistent view on this point and I do not find any reason to take a different view. Further, the defence taken by the petitioner is that she had already informed her bank asking to stop payment in connection with two missing cheques bearing nos. 455501 and 455502 and she also produced Ext. D2 and D2/1 which is the information received from her bank about stopping the payment of missing cheques bearing nos. 455501 and 455502 of 19.12.2013. Again this contention has been discussed in detail by the learned subordinate courts and rejected by them, in my opinion, for perfectly valid reasons. If the petitioner has lost the cheques and she was having sufficient fund on the date of execution of the cheque, the endorsement on the memo of return Ext. 2 would not have been due to 'insufficient fund'. If the petitioner was having sufficient fund in her account on the date, she could have shown with the help of relevant documents and with proper evidence that the cheques were not honoured due to her instructions of 'stop payment'. Again no bank official has been examined to check the veracity of Ext. D2 and D2/1. Non-corroboration of the documents produced in defence by the petitioner weighed heavily in the mind of the learned subordinate courts and this defence was rejected by the reasoned order. Therefore, the defence taken by the petitioner on the aforesaid count is also not sustainable.

12. Further, defence has also been taken about the return memo, Ext. 2, not being a genuine document and it being forged and fabricated. But the return memo Ext. 2 was not claimed to be forged and fabricated by the petitioner either before the learned trial court or before the learned appellate court. Since the cheque was presented for encashment before the Punjab National Bank, the submission that it does not bear any endorsement from State Bank of India, the bank of the petitioner, is not of significance. It is claimed that the return memo does not bear the name of the bank or the signature of the authorized official. However, during argument it has been pointed out by the learned counsel appearing on behalf of opposite party no. 2 that the return memo is from Punjab National Bank and at the top there appears the seal of branch of the Punjab National Bank and at the bottom right there is initial of the authorized official. So even on this count, the defence of the petitioner could not be sustained.

13. Further, defence taken by the petitioner is that the learned subordinate courts have not taken into consideration

the fact that there was no legally enforceable debt and presumption under Sections 118 and 139 of the N.I. Act were not taken into consideration in its true spirit. The contention of the petitioner is that by showing sufficient defence in her favour, she has discharged her liability and the onus has shifted to the opposite party no. 2 to establish his case beyond reasonable doubt.

Now, Section 118 of the N.I. ACt reads as under:-

> *"**118**. **Presumptions as to negotiable instruments**.— Until the contrary is proved, the following presumptions shall be made:—*
>
> *(a) **of consideration** — that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*
>
> *(b) **as to date** — that every negotiable instrument bearing a date was made or drawn on such date;*
>
> *(c) **as to time of acceptance** —that every accepted bill of exchange was accepted within a*

reasonable time after its date and before its maturity;

(d) ***as to time of transfer*** *—that every transfer of a negotiable instrument was made before its maturity;*

(e) ***as to order of indorsements*** *—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*

(f) ***as to stamps*** *—that a lost promissory note, bill of exchange or cheque was duly stamped;*

(g) ***that holder is a holder in due course*** *—that the holder of a negotiable instrument is a holder in due course:*

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

So, there is presumption that every negotiable instrument is made for a consideration. In the present case, there is admission by the petitioner that the cheque was signed by her, then the presumption arises that cheque was drawn for consideration. There is presumption with regard to the date on which the cheques were drawn or issued unless the contrary is proved. The last statutory presumption under Section 118(g) of the N.I. Act which is quite relevant is that every holder of the negotiable instrument is considered to be a holder in due course, i.e., he presumed to have issued the consideration for the instrument and in good faith.

No doubt all these presumptions are rebuttable but the presumption could be rebutted only with cogent evidence which must be plausible and to the satisfaction of the court.

14. Similarly, Section 139 of the N.I. Act reads as under:-

> *"**139. Presumption in favour of holde**r. -- I shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability."*

Thus, under this provision there is presumption that the holder of the cheque has received it for the discharge of debt or other liability.

15. The presumption envisaged under Section 139 of the N.I. Act is a mandatory presumption considering the use of word 'shall'. Unless contrary is proved, this presumption will hold ground. Therefore, to rebut this presumption under Sections 118 and 139 of the N.I. Act it was incumbent upon the petitioner to disprove the same by leading evidence, either direct or direct, to the effect that there was no consideration or debt in existence or that non-existence of the debt or consideration was so probable that any prudent man would have believed its non-existence.

16. Now coming to the facts of the case, it is evident that the petitioner has admitted her signature on the cheque. But, at the same time, she had raised the defence about missing cheque, making request to her bank to stop payment and there being no legally enforceable debt or liability. In the preceding paragraph the defence about missing cheque and instructions of the petitioner about stopping payment have already been dealt with and disbelieved by this Court. So far as the existence or non-existence of debt or liability is concerned, the opposite party no. 2 has proved its case by leading oral evidence on this point. On the other hand, the petitioner has

examined only herself and did not even examine her husband, who was made a co-accused in the complaint case and also stated to have involved in all the transactions. Therefore, there is no defence evidence of significance on record so as to convince the Court about the defence of the petitioner.

17. Now, Section 138 of the N.I. Act is apt to be extracted here:-

> ***"138. Dishonour of cheque for insufficiency, etc., of funds in the account.*** *—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

For an offence to be made out under Section 138 of the N.I. Act the aforesaid condition must be fulfilled.

18. In the present case, from perusal of the record, I find that cheque no, 455502 was issued on dated 20.11.2014.

The same was presented before the Punjab National Bank by opposite party no. 2 on dated 27.11.2014. The said cheque was dishonoured for want of fund vide return memo dated 27.11.2014 of the Punjab National Bank. A legal notice was issued on dated 20.12.2014 and a demand was made through legal notice. Ultimately, on reply not being made within 15 days of the receipt of the legal notice, complaint case No. 167(c) of 2015 was filed before the court of learned Chief Judicial magistrate, Patna on dated 08.01.2015. So, all the ingredients of Section 138 of the N.I. Act are present for prosecuting the petitioner.

19. Once the opposite party no. 2 has satisfied the conditions of Section 138 of the N.I. Act, the burden of proof shifted to the petitioner to prove her defence and to show that offence under the said provision was not made out. Whatever defence has been brought on record by the petitioner, the same only appears to be a feeble attempt to put up a defence like a drowning man catching a straw. If the petitioner has failed in her efforts to prove her defence, the burden never shifted to opposite party no. 2.

20. The aforesaid discussion clearly goes on to show that the petitioner has failed to make out a case to

convince this Court to interfere with the orders of the learned appellate court and consequently with the orders passed by the learned trial court. In the light of discussion made so far, the reliance placed by the learned counsel for the petitioner on ***Krishna Janardhan Bhat*** *(supra),* ***Dasrathbhai Trikambhai Patel*** *(supra)* and ***N. Vijay Kumar*** *(supra)* are not of any help to the counsel of the petitioner. Therefore, in the light of discussion made hereinbefore, I do not find any reason to interfere with the impugned orders dated 15.01.2025 and 03.06.2023 passed in Criminal Appeal No. 91 of 2023 and Complaint Case No. 167 of 2015, respectively and the same are affirmed.

21. Accordingly, the present revision petition stands dismissed.

22. Pending interlocutory application(s), if any, stand(s) disposed of.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
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