



2025:AHC:174716-DB
AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. WRIT PETITION No. - 8702 of 2023

Anupam Mittal

..Petitioners(s)

Versus

State Of U.P. And 2
Others

.....Respondents(s)

| | |
|----------------------------|---|
| Counsel for Petitioners(s) | : Anurag Vajpeyi, Pranav Tiwary, Sr. Advocate |
| Counsel for Respondent(s) | : Ajay Kumar Chaurasia, G.A., Sunil Kumar Gaur |

Court No. - 43

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE MADAN PAL SINGH, J.

1. This writ petition has been filed for issuing of a writ of certiorari for the quashing the impugned first information report dated 30.1.2022 which had given rise to Case Crime No. 42 of 2022 under Sections 420, 384, 507, 120-B IPC and Section 67 of Information Technology Act, Police Station – New Agra, District – Agra.

2. From the perusal of the first information report it transpires that the first informant had subscribed the match making profile on Shaadi.com and for that purpose, he had made certain payments. He had registered himself for finding a suitable matrimonial match. The first informant's profile was created after the receipt of the

Mobile Number, E-mail ID and photographs. The first informant had accused, in the FIR, that several persons who were having verified profiles on the platform called Shaadi.com, and whose profiles had been allowed to remain on Shaadi.com were indulging in the promotion of obscenity and were also indulging in lascivious acts on the Shaadi.com platform. It had further been alleged that Monika Gupta had gone to the extent of capturing obscene videos of the first informant and was blackmailing him and was demanding Rs.5100/- as extortion money. The first informant in the FIR had alleged that he had complained to the customer care of the Shaadi.com. He has mentioned that he had also contacted the petitioner Anupam Mittal personally for the redressal of his grievances. When nothing was done, the first information report was lodged. A further allegation was made that the petitioner under the garb of providing a suitable match for the informant was, in fact, playing with his feelings and had betrayed the trust reposed in the petitioner.

3. Learned Senior Counsel appearing for the petitioner Sri Manish Tiwari assisted by Sri Anurag Vajpeyi and Sri Pranav Tiwary has submitted that an absolutely preposterous case has been made out by the first informant. He has submitted that the case was false, absurd and ludicrous. He had submitted that the platform Shaadi.com was founded in the year 1996 and that the petitioner is the founder of it. Presently, he is also the Chief Executive Officer (CEO) of People Interactive (I) Pvt. Ltd. and this company was running the matchmaking brand Shaadi.com. He has submitted that as per the Information Technology Act, 2000, (hereinafter referred to as "the IT Act"), the company of the petitioner is an

intermediary for the purpose of the IT Act and as per Section 2(w) of the IT Act was such a “person” who on behalf of another person was receiving, storing and transmitting records and was, thus, in that process providing services. In this regard, the petitioner has also drawn the attention of the Court to the circular issued by the Ministry of Communication and Information Technology dated 6th June, 2016, which has statutorily recognized the petitioner as an intermediary as per Section 2(w) of the IT Act. Learned counsel for the petitioner further states that the petitioner’s company being an Intermediary was protected by Section 79 of the IT Act.

4. Still further, learned counsel for the petitioner has submitted that the company of the petitioner observes due diligence as per Rule 3 of the Information Technology (Intermediary Guidelines and Digital media Ethics Code) Rules, 2021, (hereinafter referred to as “the Rules, 2021”) and, therefore, has a set of terms and conditions and privacy policy to which an assent has been given by the first informant.

5. Still further, learned counsel for the petitioner has drawn the attention of the Court to the manner in which the profile is registered on the platform. He has submitted that every member, once he applies, gets a welcome Email along with terms and services and privacy link. He has submitted that the platform also, after it registers a profile sends One Time Password (OTP) to verify the mobile number of the user. If there is any hanky-panky with the profile details then the profiles are deleted and are also black listed. What is most important is that once a profile is registered neither the company nor its constituents have any control over the manner in which the services are used by applicants of the profile.

Thus, he submits that the petitioner's company is protected by the provisions of Section 79(1) & (2) of the IT Act and that the provisions of Section 79(3) of the IT Act do not in any manner apply to the case at hand.

6. Learned counsel for the petitioner also states that, in fact, a perusal of the first information report shows that no active role has been assigned to the petitioner's company or the petitioner in the commission of any offence.

7. Learned counsel for the petitioner further states that Rule 3(d) of the Rules, 2021, requires the removal of objectionable contents as and when the platform is notified through a Court Order or a Government Agency. In the instant case, learned counsel for the petitioner states that there is no Court order or any objection by any Government Agency and, therefore, as per the judgement of the Supreme Court in **Shreya Singhal vs. Union of India** reported in **(2015) 5 SCC 1** there was no liability of the petitioner to remove any content.

8. Learned counsel for the petitioner relied upon a judgement rendered in the case of **Google India Private Limited vs. Visaka Industries** reported in **(2020) 4 SCC 162** and has submitted that the Supreme Court had laid down the legal position with regard to the intermediaries and has clearly held that an intermediary, owing to the special unique characteristic of the internet cannot be made liable owing to principles of strict liability. This, he submits, as the petitioner is not in a position to know about any content which is posted on its platform. Since learned counsel for the petitioner has relied upon paragraphs no. 50 to 55 of the judgement, they are being reproduced here as under:-

"50. *At this juncture, it is apposite that we take a deeper look at what the Government of India has to say about Section 79.*

51. *Section 79 is a safe harbour provision. Internet intermediaries give access to host, disseminate and index content, products and services originated by third parties on the internet. There are different kinds of intermediaries. They include:*

(i) Internet Access and Service Provider (ISP). Examples are given in this category of Airtel, Vodafone, BSNL among others;

(ii) Data Processing and Web Hosting Providers. Examples include GoDaddy and BigRock;

(iii) Internet Search Engines and Portals like Google, Yahoo and Bing;

(iv) Email hosts like Gmail (Google) and Yahoo!Mail;

(v) Then there are instant messaging platforms such as WhatsApp, Facebook Messenger, Skype, etc.;

(vi) E-commerce intermediaries where the platforms do not take title to the goods being sold like Amazon India, Flipkart, etc.;

(vii) Internet Payment Systems and Mobile Wallets like Paytm, etc.;

(viii) There are also participative internet platforms.

52. *The 2008 Amendment introduced Chapter XII to the Information Technology Act. The amendment was in the background of the decision of the Delhi High Court in Avnish Bajaj v. State (NCT of Delhi) [Avnish Bajaj v. State (NCT of Delhi), 2004 SCC OnLine Del 1160 : (2005) 116 DLT 427] .*

53. *Intermediaries stand on a different footing being only facilitators of exchanges of information or sales. Prior to the amendment, the exemption provision under Section 79 did not exist and, therefore, an intermediary would have been liable for any third-party information or data made available*

by him as seen in Baazee [**Ed.** : The reference seems to be to Avnish Bajaj v. State, 2008 SCC OnLine Del 688 which has been reversed in Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661. Avnish Bajaj case involved an action against the Directors of Bazee.com.] . After the amendment, intermediary is not liable under any Act if it satisfied certain requirements as detailed in Section 79.

54. After referring to the decision in Shreya Singhal [Shreya Singhal v. Union of India, (2015) 5 SCC 1 : (2015) 2 SCC (Cri) 449] , the Government of India has understood the position at law to be that Section 79 stands read down to mean that an intermediary would need to takedown information only upon receiving actual knowledge that a court order has been passed to remove or disable certain material and not otherwise. The further stand of the Government of India is thus there is a recognition that intermediaries and neutral platforms are only facilitating information. It is further pointed out on behalf of the Government of India that the interpretation placed by this Court in Shreya Singhal [Shreya Singhal v. Union of India, (2015) 5 SCC 1 : (2015) 2 SCC (Cri) 449] was not available to the High Court when it passed the impugned order in this case. Shreya Singhal [Shreya Singhal v. Union of India, (2015) 5 SCC 1 : (2015) 2 SCC (Cri) 449] makes it clear that an intermediary's liability will not arise unless it failed to takedown material upon there being actual knowledge by court order or government communication. This safeguard has been put in place to avoid chilling effect on free speech. The intermediaries would, if a contrary view is taken, stand elevated to the status of super censors and denude the internet of its unique feature of a democratic medium for all to publish, access and read any and all kinds of information.

55. Owing to the special unique characteristic of the internet, intermediaries are not in a position to know about a content which is posted on its platforms by itself and, therefore, the strict liability principle cannot be made applicable to internet

intermediaries. It is the specific stand of the Government of India that even pre-amendment, an intermediary could not know the contents of what is posted on its website and, therefore, be held liable in the absence of a takedown order by a court or governmental agency.”

9. Similarly learned counsel for the petitioner relied upon a judgement rendered in the case of **Flipkart Internet Private Limited vs. State of U.P. and others** reported in **(2022) SCC Online All 706** and also on the judgement of Delhi High Court in the case of **Flipkart Internet Private Ltd. vs. State of NCT of Delhi and Anr.** passed in **W.P.(CrI) 1376 / 2020, CRL. M.As. 12009/2020** dated **17th August, 2022.**

10. In the judgement of **2022 SCC Online All 706** learned counsel for petitioner relied upon paragraphs no. 13 to 20, 22, 29, 30, 34 and 35 and, therefore, the same are being reproduced here as under:-

13. *The petitioner-Company is governed by the provisions of the I.T. Act, 2000, petitioner-Company is an “intermediary” and the role being that of a facilitator or a conduit. It is an e-commerce platform where Sellers and Buyers can interact and select and purchase products and items offered by the seller. The facts, inter se, parties are not in dispute that petitioner-Company is an e-commerce intermediary where the platform does not take title to the goods being sold on their marketplace platform. Intermediary stands on a different footing being only facilitator of exchange of information or sales under the I.T. Act, 2000. Intermediaries are not liable for the goods put up for sale by the Seller on the platform. Such e-commerce networks are exempted from liability under the I.T. Act, 2000, Rules or Regulations made thereunder concerning any third party. As per the impugned F.I.R. the date of alleged offence is 22 October 2018 i.e. on the date when the defective laptop purchased by the fourth respondent was received.*

14. *“Intermediary” is defined under Section 2(1)(w) of the I.T. Act, 2000, which reads as follows:*

2(1)(w) —intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.

15. In other words, the obligation of the intermediary is to observe due diligence and follow the guidelines that may be prescribed by the Government in this behalf. Therefore, reference will have to be made to the Information Technology (Intermediaries Guidelines) Rules, 2011⁵. The I.T. Guidelines was enacted under Section 87 of I.T. Act, 2000, and came to force in 2011. What is due diligence to be observed by the intermediary has been provided under Rule 3(1), which, inter alia, reads as follows:

3. Due diligence to be observed by intermediary - The intermediary shall observe following due diligence while discharging his duties, namely:—

(1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access-or usage of the intermediary's computer resource by any person.

(2) xxx xxx xxx

(d) infringes any patent, trademark, copyright or other proprietary rights;

(e) to (i) xxx xxx

(3) The intermediary shall not knowingly host or publish any information or shall not initiate the transmission, select the receiver of transmission, and select or modify the information contained in the transmission as specified in sub-rule (2):

Provided that the following actions by an intermediary shall not amount to hosting, publishing, editing or storing of any such information as specified in sub-rule : (2) —

(a) xxx xxx

(b) removal of access to any information, data or communication link by an intermediary after such information, data or communication link comes to the actual knowledge of a person authorised by the intermediary pursuant to any order or direction as per the provisions of the Act;

- (4) *The intermediary, on whose computer system information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes;*
- (5) *The Intermediary shall inform its users that in case of non-compliance with rules and regulations, user agreement and privacy policy for access or usage of intermediary computer resource, the Intermediary has the right to immediately terminate the access or usage lights of the users to the computer resource of Intermediary and remove non-compliant information.*
- (6) to (11) xxx xxx xxx

16. *I.T. Guidelines Rules, 2011, has since been superseded by the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021. The subsequent Guidelines does not apply to the facts of the instant case, having regard to the fact that the offence is alleged to have been committed on 22 October 2018 i.e. the date of purchase of the defective product.*

17. *Intermediary is obliged to publish the Guidelines, Rules, Regulations, Privacy Policy, and User/Buyer Agreement. However, non-compliance of these Guidelines/Rules have not been declared to be an offence under the I.T. Act, 2000. Chapter-XII of I.T. Act, 2000, provides for Offences, Penalties and Procedures.*

18. *The present matter relates to criminal liability and petitioner-Company claims protection under Section 79, further, it is submitted on behalf of petitioner-Company that the ingredients of the offence, taking the allegations on face value as alleged in the impugned FIR is not made out.*

19. *Section 79 of I.T. Act, 2000, as it earlier stood, came to be amended by the Information Technology (Amendment Act 2008), it came into force on 27 October 2009. In the given facts the amended Section 79 would be applicable and not the provisions as it stood prior to the date of amendment. Section 79 as it stands after amendment reads thus:*

"79. Exemption from liability of intermediary in certain cases:

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link hosted by him.

(2) The provisions of sub-section (1) shall apply if-

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored; or

(b) the intermediary does not-

(i) initiate the transmission,

(ii) select the receiver of the transmission, and

(iii) select or modify the information contained in the transmission.

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf (Inserted Vide ITAA 2008)

(3) The provisions of sub-section (1) shall not apply if-

(a) the intermediary has conspired or abetted or aided or induced whether by threats or promise or otherwise in the commission of the unlawful act (ITAA 2008)

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation:— For the purpose of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary."

20. *Section 79 accordingly is a safe harbour provision. Internet intermediaries give access to host, disseminate and*

index content, products and services originated by third parties on the internet which include e-commerce intermediaries where the platforms do not take title of the goods being sold. Examples of such intermediaries include Amazon India, Myntra, AJIO etc.

22. *Intermediaries stand on a different footing being only facilitator of the exchange of information or sales. Prior to the amendment the exemption provision under Section 79 did not exist, therefore, an intermediary would have been liable for any third party information or data made available by it. The 2008 amendment introduced Chapter XII to the I.T. Act, 2000. The amendment purportedly was in the backdrop of the decision of the Delhi High Court rendered in Avnish Bajaj v. State (NCT of Delhi)⁶. After the amendment, intermediary is not liable under any Act if it satisfied certain requirements as detailed in Section 79 of I.T. Act, 2000.*

29. *It cannot be expected that the provider or enabler of the online marketplace is aware of all the products sold on its Website/marketplace. It is only required that such provider or enabler put in place a robust system to inform all Sellers on its platform of their responsibilities and obligations under applicable laws in order to discharge its role and obligation as an intermediary. If the same is violated by the Seller of goods or service such Seller can be proceeded against but not the intermediary.*

30. *The manner in which the documents (Buyer/Seller Terms of Use) have been executed, contents thereof, as also the obligation of the parties stated therein establishes the due diligence exercised by the petitioner-Company, to be in accordance with and compliance of Section 79(2)(c) of the I.T. Act, 2000, read in conjunction with the Information Technology (Intermediaries Guidelines) Rules, 2011, in ensuring that Vendors/Sellers who register on its Website conduct themselves in accordance with and in compliance with the applicable laws.*

34. *The petitioner-Company is exempted from any liability under Section 79 of the I.T. Act, 2000, no violation can ever be attributed or made out against the directors or officers of the intermediary, as the same would be only vicarious, and such proceedings as initiated against them would be unjust and bad in law.*

35. *The only liability of an intermediary under Section 79(3) (b) of the I.T. Act, 2000, is to take down third-party content upon receipt of either a court order or a notice by an appropriate government authority and not otherwise. As per complaint filed by the complainant indicates that the*

petitioner-Company, raised the grievance of the complainant with the Seller.

11. Learned counsel for the petitioner further submitted that no offence under Section 384 IPC would be made out as the informant had, on demand, made no delivery of any property or valuable security. In support of this, learned counsel for the petitioner relied upon the judgement of the Supreme Court in the case of **Issac Isanga Musumba vs. State of Maharashtra** reported in **(2014) 15 SCC 357**.

12. Since no allegation with regard to any dishonest intention on the part of the petitioner has been made, learned counsel for the petitioner submits, no offence under Section 420 IPC was also made out.

13. Learned counsel for the petitioner further submitted that no specific role has been assigned to the petitioner and he submits that when a company had not been arrayed as an accused, the petitioner could not be prosecuted and, therefore, the FIR lodged only against the petitioner be quashed. For this purpose, learned counsel for the petitioner relied upon the cases of **GHCL vs. India Infoline Ltd** reported in **(2013) 4 SCC 505**, **Sharad Kumar Sanghi vs. Sangita Rane** reported in **(2015) 12 SCC 781** and **Dayle De'Souza v. Union of India** reported in **(2021) 20 SCC 135**. Also, since no specific role of the petitioner was assigned to him, no criminality can be attributed. In this regard, learned counsel for the petitioner relied upon in the cases of **Sunil Bharti Mittal vs. Central Bureau of Investigation** reported in **(2015) 4 SCC 609** and **Delhi Race Club (1940) vs. State of U.P. and another** reported in **2024 SCC Online SC 2248**.

14. Learned counsel for the petitioner further submitted that even though the FIR was against 9 accused persons, the FIR vis-a-vis the petitioner can be quashed as per the judgement of **Lovely Salhotra vs. State (NCT of Delhi) and Anr.** reported in **(2018) 12 SCC 391.**

15. Thus learned counsel for the petitioner in effect submitted:

- i). The petitioner be given the protection of Section 79 of the IT Act.
- ii). The petitioner could not be proceeded with as the petitioner was a director of a company and the company itself had not been arrayed. Furthermore, no specific allegation was made against even the director of the company.
- iii). No case whatsoever was made out from the perusal of the FIR.

16. The private respondent had not filed any counter affidavit but he had filed a written submission in which he had submitted that on the direction of the Additional Director General of Police, Agra, the FIR was lodged.

17. The informant who is a lawyer had lodged the FIR which was based on absolutely correct facts. He had stated that offences which were committed vis-a-vis the respondent with effect from 6.1.2022 to 15.1.2022 could not have been so committed if there was no complicity of the petitioner. Not only is the petitioner a part of the Shaadi.com platform but all other co-accused were a part of the Shaadi.com platform. He has stated that the petitioner had violated the IT Act and the Rules, 2021, and the advisory issued by the Ministry of Communication and Information Technology dated

6th June, 2016. He has submitted that such profiles which were not verified had also been given an opportunity to be a part of the Shaadi.com, even though the other accused were a part of the Shaadi.com platform. He has stated that the petitioner has violated the IT Act, the Rules, 2021, and the Advisory issued by the Ministry of Communication and Information Technology dated 6th June, 2016. He has submitted that such profiles which were not verified have also been given an opportunity to be a part of the Shaadi.com platform. He has stated that investigation after the lodging of the first information report was going on and the petitioner's role was being investigated into. He has further submitted that the petitioner was politically and administratively very well connected and was always affecting the investigation.

18. He has further submitted that with regard to the proper investigation, an application has been filed under Section 156(3) Cr.P.C. before the Chief Judicial Magistrate. He submits that whether a certain user after having submitted his profile could be made live was totally within the discretion of Shaadi.com. He has further pointed out to certain anomalies in the registration of certain profiles. He has also provided the name of one Reena Shah who had been made a part of the platform without any preliminary investigation etc.

19. Still further, he has submitted in his written submission that certain people with one mobile number had been given multiple profiles despite the fact that this was prohibited. He further submits that the petitioner's case was such that the provisions of Section 79(1) of the IT Act could not help the petitioner because of the provisions of Section 79(3) of the IT Act.

20. Having heard the learned counsel for the petitioner and the learned counsel for the first informant himself, this Court finds that Shaadi.com is a platform which is governed by the IT Act and is also governed by the Rules, 2021. The advisory of the Ministry of Communication and Information Technology dated 6th June, 2016, was also applicable. Definitely as per Section 79 of the IT Act, the petitioner which is an intermediary and, as per Section 2w of the IT Act, was exempted from the liabilities which could be imposed upon the intermediaries as per the judgement in the case of **Google India Private Limited vs. Visaka Industries** reported in **(2020) 4 SCC 162**. This Court finds that the petitioner was only a facilitator of exchanging of information and, therefore, for what a "third party" does on the platform could not make the intermediary liable for his or her act. As per the first information report, the petitioner was aggrieved by the acts which were done by the other co-accused persons on the platform provided by Shaadi.com. We find from the first information report that when Reena Shah a particular individual who had got access to the Shaadi.com was not behaving properly and when her acts were reported by the informant and were not looked into by the Shaadi.com, the petitioner was aggrieved by the inaction of the 'intermediary'. Similar was the case with another co-accused Monika Gupta. Also the acts of the other co-accused were reported to the petitioner but none of the complaints had borne fruit and, therefore, the first information report was lodged. The Court finds that just as the informant had joined the platform so had the other co-accused persons joined the platform. It is another matter that one of the co-accused Reena Shah's profile had been deleted. However, we

are of the view that the intermediary definitely would not be responsible for what the candidates whose profiles has been accepted on the platform of the intermediary were doing. As and when complaints were received actions were definitely taken and we also definitely find that the intermediary i.e. the company of which the petitioner was a Chief Executive Officer had the protection of Section 79 (1) and (2) of the IT Act and there was definitely no abetment from the side of the company which was running the platform. Still further, we are of the view that the petitioner was only a Chief Executive Officer and when the company was not made a party to the offence then the investigation could not proceed with. The petitioner Anupam Mittal could not be alleged to have committed any offence in his personal capacity. Also, we find that the informant who was aggrieved by the acts of the participants on the platform was not harassed on his personal social media pages. Also, despite the harassment he had continued with the platform. He could have easily withdrawn from the platform.

21. We do find that when extortion was alleged, the first informant did not have to pay any amounts either in cash or in the form of any material substance. The Court, thus, finds that as per the judgement of the Supreme Court in the case of **Issac Isanga Musumba vs. State of Maharashtra** reported in **(2014) 15 SCC 357**, no offence under Section 384 IPC was made out. Still further, the Court finds that since there was no cheating on the part of the petitioner, the offence under Section 420 IPC was also not made out.

22. Since the petitioner was given the protection of Section 79 of the IT Act, the offence under Section 67 of the IT Act was also not made out.

23. We are also of the view that as per the judgement of **Lovely Salhotra and another vs. State (NCT of Delhi) and Anr.** reported in **(2018) 12 SCC 391**, the first information report could be quashed for a few of the accused and, therefore, for that reason, we are of the view that the first information report dated 30.1.2022 which had given rise to Case Crime No. 42 of 2022 under Sections 420, 384, 507, 120-B IPC and Section 67 of Information Technology Act, Police Station – New Agra, District – Agra, vis-a-vis the petitioner Anupam Mittal should be quashed.

24. The first information report dated 30.1.2022 which had given rise to Case Crime No. 42 of 2022 under Sections 420, 384, 507, 120-B IPC and Section 67 of Information Technology Act, Police Station – New Agra, District – Agra, vis-a-vis the petitioner Anupam Mittal is, therefore, quashed.

25. The writ petition is, thus, allowed.

(Madan Pal Singh,J.) (Siddhartha Varma,J.)
September 26, 2025
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