



2025:DHC:6183



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: July 17, 2025*
Pronounced on: July 29, 2025

+ CRL.M.C. 2103/2025, CRL.M.A.9402/2025

MEDHA PATKARPetitioner

Through: Mr. Abhimanue Shreshta with
Ms. Sridevi Panikkar,

V.K. SAXENARespondent

Through: Mr. Gajinder Kumar, Ms. Kiran
Jai and Mr. Chandra Shekhar,
Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition under Article 227 of the Constitution of India has been filed challenging the Order dated 18.03.2025 passed by the Judicial Magistrate First Class ('JMFC'), South East District, Saket Courts, New Delhi, in Complaint Case No. 633718/2016 titled '*Medha Patkar vs. V.K. Saxena*'. By the said Order, the learned JMFC dismissed an application filed by the petitioner under Section 254(1) of the Code of Criminal Procedure, 1973 ("CrPC."), seeking permission to examine an additional witness.

FACTUAL MATRIX

2. The complaint in the said case was instituted on 15.12.2000, alleging that an advertisement published on 10.11.2000 in *the Indian Express* newspaper was defamatory in nature. The



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petitioner/complainant named three accused persons, including the publisher and editor of *the Indian Express* newspaper, in addition to the respondent herein. The petitioner/complainant also filed a list of documents and proposed witnesses, including herself, the Circulation Manager (or his representative), Dr. Anoop Saraya, and such other persons.

3. As per the petitioner, cognizance of the complaint was taken by the learned Metropolitan Magistrate *vide* the Order dated 31.03.2000, and summons were issued to all three accused. Accused Nos. 2 and 3 subsequently approached this Court in Crl.M.C. No. 1029/2007, seeking quashing of the summoning order. During the pendency of that petition, a compromise was arrived at between the petitioner and accused Nos. 2 and 3, pursuant to which both the said accused persons tendered an apology. The offence stood compounded and the proceedings against them were closed by this Court *vide* the Order dated 26.11.2008.

4. The matter, thereafter, proceeded against the respondent herein. On 02.08.2011, a notice under Section 251 of the Cr.P.C. was framed for the offence under Section 500 of the Indian Penal Code, 1860 ('IPC') to which the respondent pleaded not guilty and sought to be tried.

5. The trial commenced, and four witnesses were examined on behalf of the petitioner. These included the petitioner (CW-1), Prem Prakash Sinha, an employee of *Indian Express* (CW-2), Vinod, the *ahlmad* of the Court (CW-3), and Dr. Anoop Saraya (CW-4). The



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said witnesses were examined between 09.04.2018 and 29.11.2024. On the date of examination of the last listed witness, the matter was adjourned to enable the Petitioner to consider whether any further evidence was to be led.

6. It is the petitioner's case that the matter was thereafter listed on 24.12.2024 and again on 28.01.2025. On the latter date, the counsel for the petitioner informed the Court of the intention to examine an additional witness. This was objected to by the respondent on the ground that a fresh application had not been filed. The Court upon recording the petitioner's statement that an application along with details of the proposed witness would be furnished, listed the matter for 18.02.2025.

7. On 18.02.2025, an application under Section 254(1) of the CrPC was filed by the petitioner, along with a supplementary list of witnesses, seeking leave to examine one additional witness whose name had not been mentioned in the original list. The matter was thereafter, adjourned to 06.03.2025 to enable the respondent to file a reply.

8. Subsequent thereto, arguments on the application were heard on 06.03.2025, and the matter was reserved for Orders on 18.03.2025. On that date, the learned JMFC orally informed the parties that the aforesaid application stood dismissed and that a copy of the order would be supplied *dasti*.

9. The petitioner has averred that on the same date, the learned JMFC, without any formal application by the respondent or an oral



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request in that regard, on its own proceeded to pass an Order under Section 313(5) of the CrPC and recorded the reason to proceed under the said provision upon the insistence by the counsel for the petitioner. However, directions were issued for preparation of relevant questions under the said provision. While both the parties were asked to remain available through video conferencing, the learned JMFC proceeded to draft questions under Section 313(5) of the CrPC, which were, thereafter, shared through an email.

10. It is further the case of the petitioner that on 20.03.2025, when the matter was taken up, a request was made on behalf of the petitioner seeking to defer of the process of finalising the questions under Section 313(5) of the CrPC, in order to examine the implications of the Impugned Order dated 18.03.2025 and take instructions with respect to further recourse. Though, this request was noted, the learned JMFC enquired whether there were any objections or suggestions to the questions prepared. Upon receiving no objections from either side, the Court finalised the questions and directed the respondent to file his written response on the next date of hearing, i.e., 28.03.2025.

11. The petitioner has averred that the copy of the Order dismissing the application under Section 254(1) of the CrPC was received by her counsel on 19.03.2025 and being aggrieved by the Impugned Order dated 18.03.2025, the petitioner has filed the present petition.



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SUBMISSIONS OF THE PETITIONER

12. Mr. Abhimanue Shreshta, the learned counsel for the petitioner, in support of his application submitted that the learned JMFC fell into grave error in dismissing the application filed by the petitioner under Section 254(1) of the CrPC by erroneously treating it as one under Section 254(2) of the CrPC. It was contended that the scope and operation of the two sub-sections are in distinct spheres and the failure to appreciate this distinction has resulted in miscarriage of justice.

13. The learned counsel submitted that under Section 254(1) of the CrPC, once the accused has pleaded not guilty and the trial has commenced, it is obligatory upon the Magistrate to proceed to hear the prosecution and *“take all such evidence as may be produced in support of the prosecution.”* The use of the expression “shall” in Section 254(1) is indicative of a statutory mandate and casts a duty on the Court to record such evidence as the complainant may bring forth, without seeking any intervention from the Court to secure the presence of such witnesses.

14. In the present case, it was contended, the petitioner merely sought permission to examine one additional witness, who was to appear voluntarily. The application did not invoke the coercive powers of the Court or pray for issuance of summons. Hence, the application fell squarely within the ambit of Section 254(1) and could not have been tested on the anvil of conditions applicable under Section 254(2), which pertains to requests for assistance of the Court to summon witnesses or documents.



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15. It was further argued that the reasoning of the learned JMFC that Section 254(1) permits only the evidence of the complainant and no other witnesses is flawed and contrary to settled law. The phrase “*all such evidence*” employed in the Section 254(1) is of wide import and encompasses all evidence the complainant may choose to lead, including oral and documentary evidence, whether through the complainant herself or through witnesses produced voluntarily.

16. The learned counsel submitted that the application under Section 254(1) of the CrPC was filed prior to the conclusion of the prosecution evidence and before the statement of the accused under Section 313 of the CrPC had been recorded. Therefore, the application was made at an appropriate stage and could not be said to have been belated. The contention that the application was an afterthought is devoid of merit, particularly in light of the fact that the witness was not being introduced to contradict prior testimony, but merely to support the case already laid out.

17. It was further submitted that there is no statutory limitation under the CrPC that prevents a complainant from seeking to lead additional evidence, solely for the reason that the witness was not named in the initial list filed under Section 204(2) of the CrPC. The complainant retains the right to examine any witness who is produced voluntarily, and there is no procedural bar that mandates prior inclusion of the name of a witness in such list.

18. The learned counsel also drew attention to the fact that the petitioner had, in the past, availed the remedy under Section 254(2) of



the CrPC to summon the *ahlmad* of the Court. However, the present application is distinct. The earlier application had sought to call a witness through the process of Court; the present one was to lead evidence through voluntary production. The two are neither mutually exclusive nor legally inconsistent. The rejection of the present application merely because an earlier application under a different provision had been allowed, is manifestly unjustified.

19. It was further submitted that the rejection of the application has occasioned serious prejudice to the petitioner. The right to adduce evidence, especially in a case initiated by a complainant, is essential to secure a fair trial. Denying such right, without any finding of *mala fides* or delay attributable to the complainant, results in a procedural unfairness that undermines the very foundation of a criminal trial.

20. It was also pointed out that the proceedings in the present case have seen prolonged delays due to multiple factors beyond the petitioner's control, including non-appearance of co-accused, frequent adjournments sought by the respondent, the nationwide COVID-19 disruption, and even the pendency of a constitutional immunity plea under Article 361 invoked by the respondent, being the governor. In such circumstances, it cannot be said that the petitioner has engaged in dilatory tactics.

21. To strengthen his plea, the learned counsel for the petitioner relied on the decisions in :

- ***Sunil Vassudev Pednekar v. Bicholim Urban Cooperative Bank Ltd*** (2006) SCC OnLine Bom 1368.



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- *Shubrati Khan vs. State*, AIR 1960 All 394
- *Nathia vs. Sonia*, AIR 1961 Raj 42
- *Molvi Habibur Rahman Faizi vs. State of U.P.*, 1998 Cri LJ 2345
- *Laxmi Shankar Pandey vs. State of U.P.*, (2023) SCC OnLine All 3398.

SUBMISSIONS OF THE RESPONDENT

22. *Per contra*, Mr. Gajinder Kumar, the learned counsel for the respondent submitted that the present petition is liable to be dismissed on account of inordinate and unexplained delay. The complaint was filed in the year 2000, and complainant's evidence commenced in 2011. The application under Section 254(1) of the CrPC., seeking to examine an additional witness, has been filed after nearly 25 years from the institution of the complaint and approximately 14 years after initiation of complainant's evidence.

23. The name of the proposed additional witness, he submitted, has never featured in the complaint, the list of witnesses under Section 204(2) of the CrPC, or in the examination-in-chief or cross-examination of any of the prosecution witnesses. The attempt to introduce the proposed witness at this stage is nothing but an afterthought designed to fill lacunae in the complainant's case and to unduly delay the proceedings.

24. The learned counsel submitted that the petitioner had earlier moved an application under Section 254(2) of the CrPC on 18.08.2023, which was allowed on 29.02.2024. However, the present



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witness was not proposed at that stage. Instead, a separate application was filed a year later under Section 254(1) of the CrPC, without explaining the omission or the relevance of the new witness. The learned Counsel brought this Court's attention to paragraph 12 of the Impugned Order and submitted that the petitioner had already availed the opportunity to call an additional witness, however, the petitioner did not include the witness at that stage.

25. He submitted that the petitioner's conduct throughout the trial, including numerous adjournments, delays in concluding her own evidence, and even a prior dismissal of the complaint for non-prosecution on 17.04.2003, evidences a pattern of delay and abuse of process of law.

26. It was submitted that the discretion conferred upon the Magistrate under Section 254(1) of the CrPC to "*take all such evidence as may be produced*" is not unfettered. It must be read harmoniously with Section 254(2), which empowers the Magistrate to summon a witness upon an application. If the petitioner's interpretation of Section 254(1) were to be accepted, it would render Section 254(2) futile, a conclusion that cannot be endorsed.

27. The reliance placed by the petitioner on the decision in ***Sunil Vassudev Pednekar*** (supra), he submitted, is misplaced. The said decision of the Bombay High Court affirms the discretion of the Magistrate to permit or decline examination of additional witnesses, especially in the context of avoiding abuse of process or undue delay.



28. He further submitted that the petitioner's attempt to circumvent judicial discretion by invoking Section 254(1) is contrary to settled principles and would, if accepted, result in endless prolongation of trial by permitting parties to introduce new witnesses at will.

29. While drawing the attention of this Court to paragraph 13 of the Impugned Order, the learned counsel submitted that the Impugned Order clearly records that there is a delay of 6-7 years in the examination of CW-1. He further submitted that three witnesses have already been examined by the petitioner and without specifying the relevance to examine another witness, the application of the petitioner is, thus, misconceived.

30. The learned counsel submitted that the other judgments relied upon by the petitioner are also distinguishable and not applicable to the facts of the present case. *Shubrati Khan* (supra) relates to a situation where the name of the witness is not given in the list of witnesses. The decision in *Nathia* (supra) and *Sunil Vassudev Pednekar* (supra) was also on the same issue and reiterated the same principle in law.

31. To further strengthen his case, the learned counsel placed reliance on the decisions in *Jai Bajrang Associates vs Ramveer Singh & Anr*; MANU/MP/1097/2020 and *Dilawar vs State of Haryana & Anr* (2018) 16 SCC 521.

32. In rebuttal, the learned counsel for the petitioner, while reiterating the submissions already made, contended that the objections raised by the respondent are without merit. The plea of



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delay is misplaced in light of the stage of trial, the absence of any prejudice to the respondent, and the overarching objective of ensuring a fair opportunity to the complainant to lead evidence. The allegations of afterthought and procedural abuse are, he submitted, unsupported by any material on record.

33. The learned counsel submitted that the petitioner has not sought to recall or re-examine any prior witness or production of any document that was withheld earlier. The application merely prays to examine one additional witness, whose testimony is relevant and material to the case of the petitioner.

34. On the issue of delay, it was further submitted that mere passage of time does not curtail the right of a complainant to lead evidence under Section 254(1) of the CrPC. The delay, it was urged, is not attributable to the petitioner alone. The records reveal that adjournments were frequently occasioned due to the non-appearance of accused No. 2 and 3, and the respondent himself sought adjournments on at least 14 occasions, as against 6-8 sought by the petitioner.

35. Lastly, it was contended that no prejudice would be caused to the respondent by the examination of the proposed witness. The respondent would retain the right to cross-examine the said witness, and the Court retains supervisory discretion. The petitioner reasserted reliance on the decision in *Sunil Vassudev Pednekar* (supra), particularly in relation to the distinction between Sections 254(1) and



311 of the CrPC, and on *Nathia* (supra) to argue that the right to lead evidence cannot be foreclosed merely due to technical objections.

ANALYSIS AND CONCLUSION

36. Having heard the learned counsels for the parties and perused the record, before dwelling into the merits of the Impugned Order, this Court deems it necessary to reiterate the well settled principle of law, being that a trial cannot be allowed to continue indefinitely. The criminal justice system is already burdened with an overwhelming pendency of cases. Prolonging trials unnecessarily defeats the very objective of fair and expeditious justice, enshrined under Article 21 of the Constitution of India. The Supreme Court, almost three decades ago, in the case of *Abdul Rehman Antulay and Others vs. R. S. Nayak and Another*, 1992 (1) SCC 225 has held as under:-

“82. The provisions of the Code of Criminal Procedure are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains-unpleasant as it is-that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the Constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code.

... ..

86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are :

xxx xxx xxx

2. Right to Speedy Trial flowing from Article



21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

xxx xxx xxx

5. While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of Respondent and witnesses, the work-load of the court concerned, prevailing local conditions and so on-what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

xxx xxx xxx

8. Ultimately, the court has to balance and weigh the several relevant factors-'balancing test' or 'balancing process'-and determine in each case whether the right to speedy trial has been denied in a given case.

xxx xxx xxx”

37. From a perusal of the above decision, what emerges that it is incumbent on a party to be vigilant and diligent in pursuing their case and should not be the one responsible for causing a delay in the trial. However, proceedings initiated by either party in good faith cannot be treated as dilatory tactics. Ultimately, it is for the Court to decide, keeping in mind the facts of each case, whether the right to speedy trial has been denied in a given case.

38. In order to appreciate the pleas raised on behalf of the parties, it would be apposite to refer to Section 254 of the CrPC, which manifests a procedure to be followed where the Magistrate does not convict the accused under Section 252 or Section 253 of the CrPC. Section 254(1) of the CrPC provides that in such a case, the



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Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

39. Section 254(2) of the CrPC is designed to guarantee both, prosecution and the accused, a fair opportunity to present their evidence by allowing them to call upon witnesses. The provision outlines conferment of effective discretion of a Magistrate in the matter. Equitable proceedings are crucial for safeguarding the rights of the accused and the prosecution.

40. The crux of the submissions made on behalf of the petitioner is that under Section 254(1) of the CrPC, the Magistrate is bound to record the statement of the witnesses, if such witnesses are produced by the complainant. Thus, in the present case, the petitioner, by the application under Section 254(1) of the CrPC, sought to produce an additional witness in support of her case, which right, she submitted, is not extinguished by mere passage of time. More so, even if the said witness could not be named in the list of witnesses filed by the petitioner under Section 204(2) Cr.P.C., she could not be precluded from bringing a witness on her own, without the intervention of the Court.

41. It is not disputed that under Section 254(1) of the CrPC, the prosecution or complainant has a right to produce its witnesses and the Magistrate is required to take all such evidence, oral or documentary, as may be produced in support of the prosecution. It is also not in



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dispute that a party's failure to file a list of witnesses under Section 204(2) of the CrPC does not preclude such a party for examining additional witnesses during trial under Section 254(1) and 254(2) of the CrPC

42. The decision in *Sunil Vassudev Pednekar* (supra) reinforces the settled position that Section 204(2) of the CrPC is directory and not mandatory and ensures that technical lapses, such as the omission of the initial witness list does not defeat substantive justice. The decision upholds the prosecutorial discretion and Court's powers under Section 254 of the CrPC to summon material witnesses to prevent miscarriage of justice. The decisions in *Shubrati Khan* (supra), *Nathia* (supra), *Laxmi Shankar Pandey* (supra) reiterate the said principle of law.

43. In this background, it is essential to note whether reasonable and sufficient opportunity was granted to the petitioner to adduce her evidence.

44. A perusal of the petitioner's application under Section 254(1) of the CrPC, seeking to summon a fresh witness, reveals that no sufficient cause has been disclosed for the failure to produce the proposed witness, i.e., Ms. Nandita Narayan, during the extensive pendency of the present complaint. The complaint was instituted on 15.12.2000, and the notice was framed as far back as 02.08.2011. The application seeking to summon this witness was filed nearly 14 years after the notice was framed, which raises serious concerns about the *bona fides* and the timing of the request.



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45. The Trial Court record, as produced before this Court, reveals that while the petitioner attributed the delay between 2000 and 2022 to various causes, including settlement efforts, the Covid-19 pandemic, the respondent's application under Article 361 of the Constitution, and the adjournments sought by the respondent, the record also shows that from 2023 onwards, adequate opportunities were granted to the petitioner to conclude her evidence. The learned Trial Court has noted in the Order dated 02.06.2023 *'that the present matter is one of the oldest matter pending in the District and listed for Complainant's evidence', the Complainant had been examined in the year 2019 and her two more witnesses were yet to be examined.* The Court further noted that *'the interest of justice would be best served if the other witnesses are examined at the earliest and trial is conducted in a time bound manner'*.

46. On 11.08.2023, the learned Trial Court expressly directed the petitioner *'to summon her witness for the purpose of evidence positively on the next date of hearing'*, being 28.08.2023. However, the witness was not produced on that date, necessitating a direction to summon the witness afresh. On the same date, the petitioner moved another application to summon a different witness, which was allowed on 29.02.2024. Crucially, the name of Ms. Nandita Narayan was not mentioned in that application. Subsequently, on 17.10.2023 and again on 25.11.2023, the petitioner failed to produce her remaining witness. On 25.11.2023, the trial court granted a *'last and final opportunity to the Petitioner to take steps for summoning of witness and further*



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clarified that if the witness appears and the counsel for the Petitioner or the Petitioner is not available to examine the witness then the opportunity shall be closed'. The matter was then posted for 08.01.2024. On 08.01.2024, although CW-2, Mr. Prem Prakash Sinha, was present, he did not bring the summoned record. The hearing was adjourned to 29.02.2024. Mr. Sinha appeared on that date as well, but his examination was deferred due to the petitioner's request for time to produce a valid certificate under Section 65B of the Indian Evidence Act, 1872. Upon the respondent's no objection, the petitioner's application under Section 254 of the CrPC (moved earlier on 28.08.2023) was allowed. Mr. Sinha was finally examined and discharged as CW-2 on 20.03.2024.

47. Thereafter, on 08.04.2024, the petitioner informed the learned Trial Court that only one witness i.e., '*witness no. 3*' as per the list of witnesses remained to be examined, which was '*Dr. Anoop Saraya*'. Both the said witnesses, along with the additional witness were allowed to be examined on the application under Section 254 of the CrPC and were directed to appear on 04.11.2024. On that date, CW/Dr. Anoop Saraya's cross-examination was partly conducted and was concluded on 29.11.2024. On the same date, the petitioner's counsel stated that more time was required to assess whether any further witnesses needed to be summoned. Although, the matter was posted for 24.12.2024, it was again adjourned to 28.01.2025 at the petitioner's request. On 28.01.2025, the learned counsel for the petitioner expressed her intention to examine one more witness,



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however, no application was filed to this effect. The Court granted time to disclose witness details and listed the matter for 18.02.2025 for hearing the application, which was finally filed under Section 254(1) of the CrPC. The said application came to be dismissed by the Impugned Order dated 18.03.2025, after hearing both sides.

48. Needless to say, there has been an inordinate delay in examining a total four witnesses on behalf of the petitioner, that is CW-1 to CW-4.

49. It is also to be noted that the present application filed on 18.02.2025 before the learned Trial Court is cryptic in nature. The said application does not provide any reason for not producing the said witness at an earlier stage, as well as the relevance of the witness to be examined at such a belated stage.

50. Even before this Court, the petitioner has failed to show any cogent reason, which precluded her from mentioning the name of the proposed witness in her earlier application dated 18.08.2023.

51. In view of the limited scope of interference by this Court, it has examined the Impugned Order dated 18.03.2025 to ascertain whether it suffers from any jurisdictional error, patent illegality or perversity warranting interference by this Court.

52. On careful consideration, this Court finds that the learned JMFC has correctly interpreted the scope of Section 254(1) *vis-a-vis* Section 254(2) of the CrPC and applied discretion judiciously and not arbitrarily. The learned JMFC, while dismissing the application



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correctly, held that such an interpretation would render Section 254(2) of the CrPC redundant.

53. In the light of these submissions and facts of the present case, the learned JMFC was justified in exercising its discretion and rejecting the application under Section 254(1) of the Cr.P.C. The Impugned Order has carefully analysed the petitioner's contentions, harmonized the statutory interpretation and considered the long pendency and past conduct to reach a legally sustainable conclusion.

54. In view of the above discussion, the Impugned Order neither suffers from any legal infirmity nor is it manifestly unjust requiring interference by this Court.

55. Consequently, the present petition along with the pending application is accordingly, dismissed.

(SHALINDER KAUR)
JUDGE

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