

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2232 of 2017

Arising Out of PS. Case No.-369 Year-2017 Thana- MOTIHARI MUFASIL District- East
Champaran

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1. NAVNIT KUMAR Son of Late Ram Krishna Das, Resident of 401, Korara Enclave, Rukanpura, Bailey Road, P.S. Rupaspur, Patna- 800014.
 2. Madhukar Kumar Sinha, Son of Subodh Kumar Sinha, Resident of 401, Korara Enclave, Rukanpura, Bailey Road, P.S. Rupaspur, Patna- 800014.
 3. Abhishek Kumar @ Abhishek Prakash, Son of Late Arun Prakash, Resident of 401, Korara Enclave, Rukanpura, Bailey Road, P.S. Rupaspur, Patna- 800014.
 4. Parshuram Chaudhary, Son of Shri Baliram Chauhan, Resident of 401, Korara Enclave, Rukanpura, Bailey Road, P.S. Rupaspur, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna
2. The Superintendent of Police, Motihari, East Champaran.
3. The Officer In-Charge, Muffasil, Police Station, District East Champaran.
4. Ajay Kumar Singh, Son of Late Bhagwan Singh, Resident of Village- Deknha Tola, Karnkuiya, P.O. Dekha Bazar, P.S. Motihari Muffasil, Pin- 845401, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Adv.

For the State : Mr. Iqbal Asif Niazi, A.C. to G.P.5

For the respondent no.4 : Mr. Rikesh Sinha, Adv.
Mr. Rakesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

Date : 22-06-2022

Heard learned counsel for the petitioners, learned
counsel for the State of Bihar and learned counsel for the



respondent no.4.

The petitioners have preferred this application for quashing the First Information Report of Muffasil P.S. Case no.369 of 2017 (District East Champaran) registered under sections 420, 406, 504 and 506 of the Indian Penal Code.

A complaint was filed by the respondent no.4 in the Court of learned Chief Judicial Magistrate, Motihari, East Champaran against the petitioners-employees of Ascend Telecom Infrastructure Private Ltd. and two named employees of Kumar Infrastructure Private Ltd.. As per the prosecution case, it was stated therein that for setting up of a tower, an agreement was entered into between the complainant (respondent no.4) and Ascend Telecom Infrastructure Private Ltd. according to which besides the rent for the land in question, a sum of Rs.2200/ would be paid to the complainant. As per the complaint, it was further agreed upon that there would be a 20% increase in the monthly rent after three years. Payments were made to the complainant for one year in cash and in bank accounts. Later, Ascend Telecom Infrastructure Private Ltd. (hereinafter referred to as “the Company”) entered into an agreement with Perfect Company through which it started to manage the tower. Thereafter the Company withdrew from



Perfect Company and entered into another agreement for three months with Eklavya Company. Once again, the Company withdrew from Eklavya Company and entered into an agreement with Kumar Infrastructure Private Ltd. The complainant states that he started to get Rs.2600/ per month for one year six months from Kumar Infrastructure Private Ltd. but thereafter is not receiving the said amount. Total dues is of Rs.85,000/. On asking about his dues, it is stated that he was abused and threatened and the accused state that he has not been kept there as a caretaker. He is still working as a caretaker and on the site being down he starts getting phone calls on his mobile phone. He is still involved as a caretaker. A legal notice was sent by him for payment of his dues, however the accused persons did not pay any attention on the same. As the police personnel and police station refused to register a case, the complaint was filed.

The complaint filed by the complainant on 5.7.2017 was registered as Complaint Case no.1332 of 2017 in the Court of learned Chief Judicial Magistrate, Motihari, East Champaran. On the order dated 5.7.2017, being passed by the learned Chief Judicial Magistrate, the complaint was sent to the police station where Muffasil P.S. Case no.369 of 2017 was registered on



14.7.2017 under sections 420, 406, 504 and 506 of the Indian Penal Code.

It is the case of the petitioners that an agreement was entered into on 28.4.2012 between the informant (respondent no.4) and M/S Ascend Telecom Infrastructure Private Ltd. (“the Company” in short). A copy of the agreement has been brought on record as Annexure-2 to the petition. In the last page of the said agreement, a no objection certificate had been given by the informant to the effect that he has no objection if the licensee appoints its Security Guard through any agency and they further declared that neither any of the licensor nor any legal heirs of the licensor will claim for any job to the licensee. It was the categorical assertions of the petitioners that all the four petitioners were employed with the Company, however the petitioner no.3 subsequently left the employment. The Company is registered with the Department of Telecommunication, Ministry of Communication and Information Technology, Govt. of India and in order to install a telecommunication tower entered into a license agreement according to which the Company was to install a telecommunication tower on the land of the informant on payment of monthly rent of Rs.2700/-. As per the no objection certificate granted by the informant and



which is part of the agreement (Annexure-2), the licensee are at liberty to appoint its Security Guard through any agency. It was submitted by learned counsel for the petitioners that from perusal of the contents of the F.I.R., it would transpire that the Company engaged and entered into an agreement with Perfect Company followed by Eklavya Company and Kumar Infrastructure Private Ltd.. All these times and even from the last company ie Kumar Infrastructure Private Ltd., the informant continued to receive Rs.2600/ per month for about one year six months and thereafter stopped receiving the said amount and thus the complaint leading to the F.I.R. It was submitted that the allegations, if any, are against Kumar Infrastructure Private Ltd. and not against the Company of which the petitioners were the employees. Besides the allegations being purely one of civil dispute with respect to payment of arrears of rent, the Company of which the petitioners were the employees had not been made accused in the complaint. Even accepting the allegations made in the First Information Report and taking the same at their face value, they do not constitute any prima facie offence. The criminal case had been filed with malicious intentions for recovery of the arrears of monthly license fee, if any payable. Thus, it was submitted that it was a case of malicious



prosecution and the same be quashed.

The case on behalf of the respondent no.4 (informant) was that as a result of the agreement entered into between the informant and the officials of the Company, in addition to the monthly rent, an additional sum of Rs.2200/ was to be paid to the informant for his service as a caretaker. On the informant demanding his arrears, he was abused and a total amount of Rs.85,000/ for the work done by him as a caretaker was not paid. Thus it was submitted that a clear cut case under sections 420, 406, 504 and 506 of the Indian Penal Code was made out and the complaint constituting both criminal offence as well as civil, there was no bar in both the proceedings running parallel. It was further submitted by learned counsel appearing for the respondent no.4 that progress reports have been filed by the Supervising Authorities in the learned court below.

Learned counsel appearing for the State of Bihar and its authorities submitted that on investigation, the case has been found to be true against the accused persons and the investigation is pending.

Heard learned counsel for the petitioners, learned counsel appearing for the respondent no.4 and learned counsel appearing for the respondent nos.1 to 3.



As per the prosecution case, an agreement (Annexure-2) was entered into between the informant and the Company according to which the licensor ie the Company would install and operate a telecommunication tower on the land belonging to the informant for a period of 15 years commencing 28.4.2012 on payment of license fee of Rs.2700/ per month. A copy of the license agreement entered into between the informant and the Company is Annexure-2 to the petition and the no objection certificate granted by the informant on last page of the agreement is quoted hereinbelow:

“1. Mr. Ajay Kumar Singh, S/o Bhagwan Prasad Singh, aged about 46 years, Occ.: Farmer, R/o Vill-Karnkuiya, P.O.: Dekha Bazar, P.S.: Motihari Muffasil, Dist.: E. Champaran, Pin Code 845401, do hereby certify that we have no objection if the Licensee appoints its Security Guard through any agency and, we further declare that neither any of the Licensor nor any legal heir(s) of the Licensor(s) will claim for any job to the Licensee M/s Ascend Telecom Infrastructure Private Limited having its office at 34, Kashturba Path, North S.K. Puri, Patna-800013, Bihar for the premises situated Mauza-Dekha, P.O.: Dekha , P.S.-Motihari Muffasil, Dist.-E. Champaran, Pin



Code-845401.”

It may be stated here that the categorical case of the petitioners in paragraph no.4 of the writ petition was their being employed with the Company which had entered into an agreement with the informant, to which the informant replied in paragraph no. 4 of its counter affidavit. Both paragraph no.4 of the writ petition and paragraph no.4 of the counter-affidavit filed by the respondent no.4 are being quoted herein below:

Paragraph no. 4 of writ petition:

“4. That the petitioner nos.1, 2 and 4 are currently employed M/s Ascend Infrastructure Private Ltd. (hereinafter referred to as the Company) incorporated under the Companies Act, 1956 and having its registered offices at 37-2, Plot no.332, Mani Mansion, Defence Colony, Sainikpuri, Secunderabad and Bihar Circle Office at 401, Korara Enclave, Rukunpura, Bailey Road, Patna. The petitioner no.1 was posted as Deputy Manager, OPS Lead-BH, OPS Department, the petitioner no.2 as Manager, Energy Head BH & JH, Energy Department, the petitioner no.3 was employed as MIS coordinator, Acquisition Department and the petitioner no.4 as Deputy Manager, Operation Head, BH & JH, OPS Department in the Company. The petitioner no.3 has left



the employment of the Company.”

Paragraph no.4 of the counter-affidavit of respondent
no.4:

*“4. That statements made in para 2 to 6 of
the criminal writ petition are matter of
records and hence no comment is required.”*

From reading of the F.I.R., it would transpire that the informant categorically states therein that for management of the tower, the Company entered into different agreements one after other with Perfect Company, Eklavya Company and Kumar Infrastructure Private Ltd.. The informant received a sum of Rs.2600/ from Kumar Infrastructure Private Ltd. for one year six months but thereafter did not receive the amount from them.

As per the contents of the F.I.R., according to the informant, the amounts to be received by him were under two heads, one was the rent for the land on which the tower had been installed and this had to be paid by the Company of which the petitioners were the employees. The other head as per the informant was the work done by him as a caretaker. In the F.I.R., he states that the same was not paid by Kumar Infrastructure Private Ltd.. This arrears of Rs.85,000/ which was due, as per the informant's case for the work done as a caretaker



would be further evident from paragraph no.6 of the counter-affidavit of respondent no.4 (informant) which is quoted hereinbelow:

“6. That it is relevant to mention here it is correctly mentioned in the complaint petition that petitioner abuses the respondent no.4 (informant) when demanded arrears amount of Rs.85,000/ for work done by respondent no.4 (informant) as care taker.”

Thus, to sum up the facts stated herein above, a license agreement was entered into between the informant and the Company (of which the petitioners were the employees), according to which the Company ie the licensee was to set up a tower on the land of the petitioners on payment of Rs.2700/ per month as license fee for the period of 15 years commencing 28.4.2012. A no objection certificate was given by the informant in the agreement enabling the licensee ie the Company to appoint its Security Guard etc. through any agency. It is the informant's case in the F.I.R. that the Company entered into agreements with Perfect Company, Eklavya Company and Kumar Infrastructure Private Ltd. for its management, however it was the informant who continued to manage the tower in question and besides the license fee, which was paid by the Company, Kumar Infrastructure Private Ltd. continued to pay



the informant for the work done by him as a caretaker for about one year six months but thereafter stopped payment and a total arrears of Rs.85,000/ piled up. Thus, from these facts, it is clear that the dues which remained payable to the informant was on account of the work done by him as a caretaker and which had not been paid to him by Kumar Infrastructure Private Limited. Thus, no amount was due or payable by the Company of which the petitioners were the employees nor was there any occasion for the informant to approach the petitioners or their Company for payment of the arrears.

Section 420 of the Indian Penal Code reads as follows:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

The essential ingredients of Section 420 of the Indian Penal Code are as follows:

(i) cheating;



(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) mens rea of the accused at the time of making the inducement.

Cheating is defined under section 415 of the Indian Penal Code. The Hon'ble Supreme Court in the case of Hridaya Ranjan Prasad Verma and others vs. State of Bihar and Another [(2000)4 SCC 168] observed in paragraph nos.13, 14 and 15 of its judgment as follows:

"13. Cheating is defined in Section 415 of the Code as, "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation - A dishonest concealment of facts is a deception within the



meaning of this Section.

The section requires - (1) Deception of any person.

(2) (a) Fraudulently or dishonestly inducing that person

(i) to deliver any property to any person;

or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the



inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

So far as the instant case is concerned, there is no allegation of cheating against the petitioners from the inception.



In fact, even the allegation of non payment of the dues is against Kumar Infrastructure Private Ltd.. However neither the Company of the petitioners nor the Company Kumar Infrastructure Private Ltd. have been arraigned as accused in the instant F.I.R.

In this context, it would be relevant to note that the Hon'ble Supreme Court in the case of R. Kalyani vs. Janak C. Mehta and others, [(2009)1 SCC 516] held as follows:

“35. In Hira Lal Hari laL Bhagwati v. CBI it has been held: 33. Likewise the ingredients of Section 420 of the Indian Penal Code are also not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial as has been held by this Court in G. Sagar Suri v. State of U.P. . In this case, this Court held that.

"Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused, it is a serious matter."



40. It is settled law, by catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise of representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed."

36. Although the legal principle that a penal statute must receive strict construction, it is not in doubt or dispute, we may notice some authorities in this behalf.

In Section 263 of the Francis Bennion's Statutory Interpretation it is stated :

"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The Court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention."

37. Maxwell in The Interpretation of Statutes (12th Edn) says:



"The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfillment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

38. In *Craies and Statute Law* (7th Edn. At p. 529) it is said that penal statutes must be construed strictly. At page 530 of the said treatise, referring to *U.S. v. Wiltberger*, it is observed, thus :

"The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and



ordain its punishment."

39. *In Tuck v. Priester, which is followed in London and County Commercial Properties Investments Ltd. v. Attorney General, it is stated:*

"We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms they are not enforceable. Also where various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive."

40. *Blackburn, J. in Wills v. Thorp observed:*

"When the Legislature imposes a penalty, the words imposing it must be clear and distinct."

41. *If a person, thus, has to be proceeded with as being variously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company."*



In the case of Kailash Kumar Sanwalia vs. The State of Bihar and Another [(2003)7 SCC 399], the Hon'ble Supreme Court dealing with the provisions of criminal breach of trust as defined under section 405 of the Indian Penal Code held as follows:

“8. What amounts to criminal breach of trust is provided in Section 405 IPC. Section 409 is in essence criminal breach of trust by a category of persons. The ingredients of the offence of criminal breach of trust are:-

(1) Entrusting any person with property, or with any dominion over property.

(2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so as to do in violation -

(i) of any direction of law prescribing the mode in which such trust is to be discharged; or

(ii) of any legal contract made touching the discharge of trust.

9. The basic requirement to bring home



the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not; misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.”

So far as the instant case is concerned, neither the petitioners nor the Company in which the petitioners were theoyees, even as per the F.I.R. were owing any money to the informant. It cannot be said that there was any entrustment or that the accused with dishonest intention misappropriated or converted the same to their own use. Thus, even accepting the allegations, none of the ingredients either of cheating or of criminal breach of trust is made out from the contents of the F.I.R.. So far as the petitioners are concerned, it would be relevant to note here that in the F.I.R., the informant states that he had got a legal notice sent for recovery of his arrears amount and thereafter it proceeded to lodge the instant case. In this context, it would be relevant to note the observations of the



Hon'ble Supreme Court in the case of Indian Oil Corporation
v. NEPC India Ltd. and others [(2006)6 SCC 736]:

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP, this Court observed :

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the



High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

In its judgment, in the case of State of Haryana and others vs. Bhajan Lal and others, [1992 Supp (1) SCC 335], the Hon'ble Supreme Court in paragraph no. 102 of its judgment has given categories of cases by way of illustrations wherein the extraordinary power under Article 226 or the inherent power under section 482 of the Code of Criminal Procedure could be exercised to prevent abuse of process of the Court:

"102. In the back drop of interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of



justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but



constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”



Having heard learned counsel for the parties and having perused the materials on record specially the contents of the F.I.R., in the opinion of the Court, the case of the petitioners would fall under categories 1, 2, 3, 4 and 7 as laid in paragraph no. 102 of the judgment of the Hon'ble Supreme Court in the case of Bhajan Lal (supra). Thus, in the opinion of this Court, the direction of the Court to investigate into the complaint and the F.I.R. registered pursuant thereto being Motihari Muffasil P.S. Case no.369 of 2017 (District East Champaran) dated 14.7.2017 amounts to abuse of the process of the Court and are liable to be quashed.

Accordingly, the order dated 5.7.2017 passed by the learned Chief Judicial Magistrate, Motihari, East Champaran and the F.I.R. of Motihari Muffasil P.S. Case no. 369 of 2017 (District East Champaran) dated 14.7.2017 are both hereby quashed.

The application is allowed.

(Partha Sarthy, J)

Saurabh/-

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