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Court : Supreme Court of India

Decided On : May-03-1961

Reported in : AIR1962SC63; [1962]2SCR694

Judge : J.R. Mudholkar,; K. Subba Rao and; Raghubar Dayal, JJ.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 2, 3 to 9, 10, 11, 13, 14, 15 and 16; Prevention of Corruption Act, 1947 - Sections 5A; ;Indian Penal Code (IPC), 1860 - Sections 187; Code of Criminal Procedure (CrPC) , 1898 - Sections 5, 562, 563 and 564; ;Constitution of India - Article 133(1)

Appellant : Delhi Administration

Respondent : Ram Singh

Judgement :

Raghubar Dayal, J.

1. The only point for consideration in this appeal, by certificate granted by the High Court of Judicature at Punjab, is whether a police officer, who is neither a special police officer under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act CIV of 1956), hereinafter called the Act, nor a police officer subordinate to a special police officer, can validly investigate the offences under the Act.

2. Ram Singh, respondent, was suspected of having committed an offence under s. 8 of the Act. Jet Ram, Sub-Inspector, who had not been appointed a special police officer by the State Government, investigated the case and submitted the charge-sheet to the Magistrate. The Magistrate quashed the charge-sheet, holding that the special police officer alone was competent to investigate the case and that Jet Ram could not have investigated it. On revision by the State, the High Court agreed with the view of the Magistrate and dismissed the revision. The High Court, however, granted a certificate under Art. 133(1)(c) of the Constitution and hence this appeal by the Delhi Administration.

3. The learned Solicitor-General, appearing for the Delhi Administration, has submitted that in the absence of any definite provision in the Act de-barring the police to exercise its powers with respect to cognizable offences, the regular police can exercise those powers and that, consequently there is nothing wrong in the Sub-Inspector of the regular police making an investigation in a case under the Act. He also submits that the special police officer is not competent to investigate offences, his powers being confined to what may come within the expression 'dealing with offences under the Act', and which expression, according to him, does not cover the power to investigate into offences.

4. It is urged for the respondent that it is only the special police officer who is competent to investigate the offences under the Act.

5. Before dealing with the merits of the question for determination, we may set out the object of the enactment and the relevant provisions thereof. The Act was enacted in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the suppression of immoral traffic in women and girls. Section 2 deals with definitions and, according to its clause (i), 'special police officer' means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purposes of the Act. Sections 3 to 9 create new offences and provide punishment for them. It is not necessary to detail the nature of the offences.

6. Section 10 deals with release of convicted persons convicted for certain offences, on probation of good conduct, in the manner provided in sub-s. (1) of s.

562 of the Code of Criminal Procedure, hereinafter called the Code, or with admonition as provided in sub-s. (1A) of s. 562 of the Code. Certain provisions of s. 562, 563 and 564 apply to such cases.

7. The provisions of s. 11 of the Act correspond to those of s. 565 of the Code.

8. Section 12 provides for taking security for good behaviour from habitual offenders at the time of passing sentence on them and thus correspond, in a way, to the provisions of s. 106 of the Code. The provisions of Sections 112 to 126 of the Code apply to such a case.

9. Sections 13, 14, 15 and 16 of the Act are as follows :

'13. (1) There shall be for each area to be specified by the State Government in this behalf, a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of -

(a) an Assistant Commissioner of Police in the presidency towns of Madras and Calcutta;

(b) a Superintendent of Police in the presidency town of Bombay; and

(c) a Deputy Superintendent of Police elsewhere.

(3) For the efficient discharge of his functions in relation to offences under this Act -

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and

(b) the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the

working of this Act.

14. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code :

Provided that, notwithstanding anything contained in that Code, -

(i) arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval;

(ii) when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;

(iii) any police officer not below the rank of inspector specially authorized by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape, or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

15. (1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a woman or girl living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a

warrant.

(2) Before making a search under sub-section (1), the special police officer shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue any order in writing to them or any of them so to do.

(3) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

(4) The special police officer entering any premises under sub-section (1) shall be entitled to remove therefrom any girl, if in his opinion she is under the age of twenty-one years and is carrying on or is being made to carry on, or attempts are being made to make her carry on, prostitution.

(5) The special police officer, after removing the girl under sub-section (4) shall forthwith produce her before the appropriate magistrate.

(6) The special police officer and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of, the search.

16. (1) Where a magistrate as reason to believe from information received from the police or otherwise, that a girl apparently under the age of twenty-one years, is living, or is carrying on, or is being made to carry on prostitution, in a brothel, he may direct the special police officer to enter such brothel, and to remove therefrom such girl and produce her before him.

(2) The special police officer after removing the girl shall forthwith produce her before the Magistrate issuing the order.'

10. Section 17 provides for intermediate custody of girls removed under s. 15 or rescued under s. 16.

11. Sections 18 to 21 provide for matters unconnected with offences.

12. Section 22 provides that no Court inferior to that of a Magistrate as defined in clause (c) of s. 2 shall try the offences mentioned in the section. The Magistrates mentioned in this clause are District Magistrates, Sub-Divisional Magistrates, Presidency Magistrates or a Magistrate of the First Class specially empowered by the State Government by notification in the official gazette to exercise jurisdiction under the Act.

13. It is clear from the various provisions that the Act is a complete Code with respect to what is to be done under it. It deals with the suppression of immoral traffic in women and girls, a matter which has to be tackled with consideration, intelligence and understanding of the problem. This is evident from the provisions of clause (b) of sub-s. (3) of s. 13 which provides for the association of a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) with the special police officer in order to advise him on questions of general importance regarding the working of the Act.

14. The Act creates new offences, provides for the forum before which they would be tried and the orders to be passed on conviction of the offenders. Necessary provisions of the Code of Criminal Procedure have been adopted fully or with modifications. The Act provides machinery to deal with the offences created and its necessary implication must be that that new machinery is to deal with those offences in accordance with the provisions of the special Act and, when there is no specific provision in such Act, in accordance with the general procedure and that no other machinery is to deal with those offences. It does not appear reasonable that the investigation of offences would have been left unprovided and was to be done by the regular police, in accordance with the regular procedure laid down under the Code.

15. On the other hand, there are certain provisions which are such that the regular police cannot comply with them and thus they point to the conclusion that it is the special police officer alone who is to take any action which the police has to take in connection with the offences under the Act. Section 14 makes offences under the Act cognizable, which, according to the Code means that persons accused of those offences can be arrested without a warrant, and s. 157 of the Code specially mentions that the investigating officer, if necessary, is to take measures for the discovery and the arrest of the offender; and yet, the power to arrest without a warrant is not given to the regular police, but under the proviso to this section, is to be exercised by the special police officer or under his direction or guidance or subject to his prior approval. The provisions of proviso (iii) correspond to the provision of s. 57 of the Code and others refer to special circumstances in which a police officer not below the rank of an inspector specially authorised by the special police officer can arrest without warrant.

16. Section 15 provides for searches without warrant, by the special police officer. This section does not specifically state that the special police officer alone will search without warrant, but it is clear from the provisions of this section that officers of the regular police force will not search without warrant and thus will not exercise the power given under s. 165 of the Code. All the provisions of s. 15 correspond to those of s. 165 of the Code.

17. Further, in view of sub-s. (2) of s. 15, the special police officer is required to include at least one woman among the search witnesses. There is no such restriction in s. 103 of the Code. If a regular police officer is to conduct search in pursuance of the powers conferred under s. 165 of the Code, he is not bound to include a woman among the search witnesses. Further, sub-ss. (4) and (5) of s. 15 authorise a special police officer to remove any girl found in the premises searched, if she be under twenty-one years of age and is carrying on prostitution. Such a girl is to be produced before the appropriate Magistrate. The ordinary regular police officer conducting search under s. 165 of the Code, will not be able to do anything with respect to such a girl found in the premises searched by him. These provisions clearly indicate that the regular police officers are not to exercise any powers in connection with the offences and the other purposes of this Act.

18. The entire police duties in connection with the purposes of the Act within a certain area have been put in the charge of a special police officer. There must be a definite purpose behind the provision of appointing a police officer in charge of the police duties within a specified area for the purpose of this Act. If the ordinary police can also perform the police duties for the purposes of the Act, there can be no special reason for making the provision for the appointment of a special police officer. The expression 'police duties' will include all the functions of the police in connection with the purpose of the Act and in the special context of the Act they will include the detection, prevention and investigation of offences and the other duties which have been specially imposed on them under the Act.

19. According to s. 13 of the Act, 'there shall be, for each area to be specified by the State Government, a special police officer appointed by or on behalf of that Government for dealing with offences under the Act in that area'. The expression 'dealing with offences' is of wide import and will include any act which the police has to do in connection with the offences under the Act. In this connection, we have been referred to the provisions of s. 5 of the Criminal Procedure Code, which reads :

'All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.'

20. It is submitted that the expression 'dealt with' must mean something which is not included in investigation, inquiry or trial. This does not necessarily follow from the provisions of this section. The word 'otherwise' points to the fact that the expression 'dealt with' is all comprehensive, and that investigation, inquiry and trial were some aspects of 'dealing with' the offences. Further, according to sub-s. (3) of s. 13, the special police officer is to be assisted, for the efficient discharge of his functions in relation to offences under this Act, by a number of subordinate police officers and will be advised by a non-official advisory body. The expression

'functions in relation to offences' do include his functions connected with the investigation of the offences. There is no reason to exclude such functions from the functions contemplated by sub-s. (3).

21. The suggestion that the special police officer would be very heavily worked in case he had to perform all the ordinary duties of the police connected with the investigation of offences in addition to the duties conferred on him under the Act, does not go far in putting a different interpretation on the powers of the special police officer. He is to be assisted by his sub-ordinate police officers. They can investigate both under the implication of the provisions of s. 13, as they are to assist the special police officer, and also on deputations by the special police officer, in view of s. 157 of the Code.

22. Section 5A of the Prevention of Corruption Act, 1947 (Act II of 1947) provides that notwithstanding anything contained in the Code of Criminal Procedure, no police officer below the rank of officers mentioned in clauses (a), (b) and (c) shall investigate any of the offences mentioned in that Section. The provision was made in a prohibitive form because the police officers below the ranks mentioned were not to exercise their power of investigation unless a Magistrate specially ordered them to investigate. The provision was not with respect to conferring any special powers on any particular officer. It was just to restrict the powers of certain officers with respect to investigating certain offences in certain circumstances. The difference in the language of s. 5A of the Prevention of Corruption Act from that of s. 13 of the Act, is therefore of no help to the contention for the State.

23. If the power of the special police officer to deal with the offences under the Act, and therefore to investigate into the offences, be not held exclusive, there can be then two investigations carried on by two different agencies, one by the special police officer and the other by the ordinary police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to co-ordinate the activities of the regular police with respect to cognizable offences under the Act and those of the special police officer.

24. The special police officer is a police officer and is always of the rank higher than a Sub-Inspector and therefore, in view of s. 551 of the Code, can exercise the

same powers throughout the local area to which he is appointed as may be exercised by the officer in charge of a police station within the limits of his station.

25. We are therefore of opinion that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognizable offences. The result is that this appeal by the Delhi Administration fails and is hereby dismissed.

Mudholkar, J.

26. The point which arises for consideration in this appeal is whether a charge-sheet presented by a station-house officer alleging against the respondent certain offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. CIV of 1956) (hereinafter called the Act) is bad because the investigation into those offences was carried out not by a special police officer appointed under the Act but by the station house officer.

27. The respondent is alleged to be a pimp and said to have committed offences under s. 8 of the Act. Investigation into the offences was made by the officer-in-charge of the Kamla Market Police Station and a charge-sheet was presented by him before a First Class Magistrate in Delhi. Similar charge-sheets were put up against certain other persons. An objection was taken before the Magistrate in all these cases that the charge-sheets were bad because the investigation into the various offences was not made by the special police officer referred to in the Act. This objection was upheld by the Magistrate and the charge-sheets were rejected. An application for revision was preferred by the Delhi Administration before the High Court of Punjab. But that application was also rejected. Thereupon the Administration sought a certificate from the High Court under Art. 134(1)(c) of the Constitution which the High Court granted. That is how the present appeal came to be preferred before this Court.

28. The High Court, following the decision in Kuppammal, In re I.L.R. [1959] Mad. 345 held that an offence under the Act must be investigated only by one of the

officers mentioned in s. 13 and that a charge-sheet based upon the investigation made by any other police officer is bad and must be quashed.

29. In my opinion the view taken by the Madras High Court and accepted by the Punjab High Court is untenable. The Act creates certain new offences, prescribes the placing of certain restrictions upon persons found guilty of those offences, provides for the appointment of a special police officer and for the constitution of an Advisory Board, confers certain special powers upon the special police officer, empowers Magistrates to order the closure of brothels and eviction of the offenders from the premises occupied by them as well as for the removal of prostitutes from any place and also makes a provision for the establishment of protective homes as well as empowers Magistrates to order detention of women and girls in such protective homes in certain circumstances. In addition it provides for the making of rules.

30. According to my brother Raghubar Dayal, J., since the Act creates new offences and prescribes the procedure for dealing with them it is a complete code in itself. Therefore, according to him, to that extent the provisions of the Act must prevail over those of the Code of Criminal Procedure, 1898. Further according to him, since the Act provides for the appointment of a special police officer for dealing with offences under this Act in the area within his jurisdiction, it is he and he alone who can investigate into an offence under the Act committed within that area.

31. It would be convenient to refer to the provisions of s. 5 of the Code of Criminal Procedure which runs thus :

'(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.'

32. Sub-section (2) would prima facie apply to cases arising under the Suppression of Immoral Traffic in Women and Girls Act except to the extent that its provisions are abrogated or superseded by the aforesaid Act. While sub-s. (1) provides that only an offence under the Penal Code must be investigated in accordance with the provisions of the Code of Criminal Procedure, sub-s. (2) provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code subject to any enactment for the time being in force 'regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.' What has to be ascertained therefore, is whether in the Act in question there are any provisions which regulate the manner of carrying out an investigation of offences thereunder - because here we are concerned only with the limited question of the power of a station house officer to investigate into an offence under the Act. A bare perusal of the Act would show that there is no provision therein which confers upon the special police officer appointed thereunder the power to investigate into an offence made punishable by the Act. Such power is, however, sought to be deduced from the provisions of sub-s. (1) of s. 13 which reads thus :

'There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.'

33. It is said that the words underlined are wide enough to include the power to investigate into offences. These are general words and are undoubtedly of wide import. But they must be construed in the light of the other provisions of the Act. The Act confers certain specific powers and imposes certain specified duties on a special police officer. It is to these matters that the words 'dealing with offences' must be confined. If it were the intention of the legislature to confer upon a special police officer the sole power to investigate into an offence under the Act it would have enacted a provision similar to s. 5A in the Prevention of Corruption Act, 1947 (2 of 1947). This Act was before the Parliament when it enacted the Act in question and it would be reasonable to presume that if Parliament intended to confer similar power upon a special police officer appointed under this Act it would have used the same language for expressing its will as it did in s. 5A of the

Prevention of Corruption Act.

34. Offences under the Act have been made cognizable by s. 14 thereof. Therefore, prima facie s. 156(1) of the Code of Criminal Procedure would apply and an officer-in-charge of a police station would have the power to investigate into such an offence. No doubt, by virtue of the provisions of sub-s. (2) of s. 5 of the Code of Criminal Procedure, the provisions of s. 156, Criminal Procedure Code would be subject to those provisions of the Act which bear on the question of investigation into offences. Had Parliament desired that the provisions of s. 156 of the Code of Criminal Procedure should not apply to offences under the Act it would, in view of the provisions of sub-s. (2) of s. 5 of the Code of Criminal Procedure, have been careful enough to make express provisions in the Act regulating the manner of investigation of offences thereunder and specifying the officer entitled to make the investigation so as to exclude a police officer entitled under the Code of Criminal Procedure to investigate into offences. In my judgment it would not have left the matter to mere conjecture and rested content by using the expressed 'dealing with offences under this Act', which on its fact is inadequate for excluding the operation of s. 166, Code of Criminal Procedure.

35. Investigation, inquiry and trial of offences and definite stages in the process of bringing a delinquent to book. Each stage is distinct from the other and the legislature has made it quite clear in s. 5 of the Code of Criminal Procedure itself that they are important enough to be mentioned specifically. To make the point clearer it would be useful to compare the provisions of sub-s. (1) of s. 13 of the Act with those of sub-ss. (1) and (2) of s. 5 of the Code of Criminal Procedure. While in the former, Parliament has merely used the words 'dealing with offences under the Act' in the latter the words used are 'investigating, inquiring into, trying or otherwise dealing with such offences.' No doubt the expression 'dealing with offences' would, according to its ordinary connotation, include the stages of investigation, inquiry and trial. But the legislature has specifically referred to the aforesaid three stages because of their importance and apparently for obviating any doubt as to its intention. When Parliament had before it the Code of Criminal Procedure and in particular the provisions of s. 5 and s. 156 thereof it would have used in sub-s. (1) of s. 13 of the Act language similar to that used by it in sub-s. (2)

of s. 5, Criminal Procedure Code if it were its intention to include in sub-s. (1) of s. 13 matters like investigation, inquiry and trial or any of them. It would, therefore, be legitimate to infer that when Parliament spoke in s. 13(1) of a special police officer being empowered to deal with offences under the Act it did not intend to confer upon him the power to investigate into an offence under the Act.

36. It was pointed out to us that a special police officer shall not be below the rank of an Assistant Commissioner of Police in the towns of Madras and Calcutta and a Superintendent of Police in the Presidency Town of Bombay and a Deputy Superintendent of Police elsewhere and, therefore, such police officer would have the power to investigate into an offence. That, however, would be not by force of the provisions of sub-s. (1) of s. 13 of the Act but by that of the provisions of s. 551 of the Code of Criminal Procedure, which runs thus :

'Police-officers superior in rank to an officer-in-charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.'

37. I would like to make it clear that it is not my view that a special police officer appointed under the Act cannot have the power to investigate into an offence under the Act but what I hold is that he does not derive such power from sub-s. (1) of s. 13 of the Act. It is only under s. 551 of the Code of Criminal Procedure that he may be able to exercise the power to investigate into an offence under the Act.

38. It was said by reference to the definition of special police officer in s. 2(i) of the Act that since such an officer is to be in charge of 'police duties' within a specified area he would have the power to investigate into an offence. The expression 'police duties' is not defined anywhere in the Act. But we were referred to s. 23 of the Police Act in this connection. The relevant part of that section runs thus :

'It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice .....'

39. The suggestion is that the words 'to detect and bring offenders to justice' are comprehensive enough to include the power to investigate. It is sufficient to say that the duties enjoined upon police officers by s. 23 are something quite apart from those which are enjoined upon them by the Code of Criminal Procedure. The investigation into an offence is a matter of some importance. Statements recorded therein have considerable value and can be used for contradicting witnesses questioned during investigation. It is for this reason that detailed provisions have been incorporated in the Code of Criminal Procedure dealing with this subject. It is only when an investigation is completed that a police officer is empowered to present a charge-sheet. Neither the Police Act nor the Suppression of Immoral Traffic in Women and Girls Act contains any provision whatsoever with regard to the making of an investigation or presentation of a charge-sheet. It would, therefore, not be appropriate to read in the words 'deal with offences' the power to investigate into them and present a charge-sheet.

40. The High Court of Punjab as well as the High Court of Madras have held not only that s. 13(1) of the Act confers power upon special police officer to investigate into an offence under the Act but that the power conferred is exclusive. I am unable to appreciate how even assuming that the words 'deal with offences' confer upon a special police officer the power to investigate into an offence under the Act and present a charge-sheet, the powers of an officer-in-charge of a station-house within whose jurisdiction an offence under the Act has been committed are excluded. There is not a whisper in s. 13(1) of the Act of the exclusion of the powers of an officer-in-charge of a police station. It is suggested that unless it is so held a confusion will result because the special police officer as well as the officer-in-charge of a police station will each exercise his power to investigate into an offence under the Act.

41. I do not think that there would be a danger of such simultaneous exercise of the power to investigate by two officers. The offence will have to be registered at the police station within the limits of the jurisdiction of which the offence has taken place. Thereafter it would be investigated into by the officer at whose instance it was registered. If that officer happens to be a station-house officer the special police officer may take out the investigation from his hands or allow him to

continue it. If the offence is registered at the instance of the special police officer, the station-house officer would be bound to know of it from the station-house records and would stay his hands.

42. Upon this view, therefore, I would allow the appeal, set aside the judgment of the High Court and of the Magistrate and remit the case to the latter for being dealt with according to law.

43. BY COURT : In accordance with the opinion of the majority, this appeal is dismissed.

44. Appeal dismissed.

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