



2025:KER:77437

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 17TH DAY OF OCTOBER 2025 / 25TH ASWINA, 1947

CRL.A NO. 434 OF 2011

AGAINST THE JUDGMENT DATED 11.02.2011 IN CC NO.10 OF 2004 OF
THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE) ,
THRISSUR

APPELLANT/ACCUSED:

BENNET.T.C. , S/O.CLEMANT,
FORMER WORKER, GRADE IV, KERALA ELECTRICAL & ALLIED
ENGINEERING CO. LTD. , MAMALA, RESIDING, AT THAIPARAMBIL,
MAMANGALAM, KOCHI-25.
BY ADV.SRI.S.RAJEEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE D.Y.S.P. , VIGILANCE AND ANTI
CORRUPTION BUREAU, ERNAKULAM REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
BY SPL.PUBLIC PROSECUTOR SRI.RAJESH.A,VACB.
SR.PUBLIC PROSECUTOR SMT.REKHA.S, VACB.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06.10.2025,
THE COURT ON 17.10.2025 DELIVERED THE FOLLOWING:



CR

JUDGMENT

Dated this the 17th day of October, 2025

This appeal is at the instance of the accused in C.C.No.10/2004 on the files of the Enquiry Commissioner and Special Judge (Vigilance), Thrissur, challenging conviction and sentence imposed against him in the said case, as per judgment dated 11.02.2011.

2. Heard the learned counsel for the appellant/accused as well as the learned Public Prosecutor. Also gone through the records of the Special Court and the decisions placed by the learned counsel for the appellant as well as the learned Public Prosecutor, in detail.

3. The prosecution case is that the accused, who was working as the Shop-in-Charge of Foreign Liquor Shop No. FL-1-III,



Lissy Junction, Ernakulam, after being entrusted with an amount of Rs.5,52,549/-, along with other amounts collected by him, misappropriated Rs.5,52,549/- by not remitting the same into the account of the Beverages Corporation, by falsifying the remittance records. On this premise, the prosecution alleges commission of offences punishable under Sections 13(1)(c) and 13(1)(d)(ii) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act, 1988' hereinafter) as well as under Sections 409, 420 and 477A of the Indian Penal Code (for short, 'the IPC' hereinafter).

4. The Special Court took cognizance for the said offences acting on the final report filed before it and proceeded with trial. During trial, PW1 to PW10 were examined and Exts.P1 to P46 were marked on the side of the prosecution. No evidence adduced on the part of the defence.

5. On analysis of the evidence, the learned Special Judge found that the accused committed offences punishable under Sections 13(1)(c) and 13(1)(d)(ii) r/w Section 13(2) of the PC Act,



1988 as well as under Sections 409, 420 and 477A of the IPC and he was sentenced as under:

“In the result, accused/convict, Sri.T.C.Bennet, is sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.3,00,000/- (Rupees three lakhs only) for the offence punishable under Section 13(1)(c) read with 13(2) of the Prevention of Corruption Act, 1988 and in default of payment of fine he is sentenced to undergo Simple Imprisonment for a period of three months. He is also sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) for the offence punishable under Section 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988 and in default of payment of fine he is sentenced to undergo Simple Imprisonment for a period of three months. He is also sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.2,000/- (Rupees two thousand only) for the offence punishable under Section 409 of IPC and in default of payment of fine he is sentenced to undergo Simple Imprisonment for one month. He is also sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.2,000/- for the offence punishable under Section



420 of IPC and in default of payment of fine he is sentenced to undergo Simple Imprisonment for one month. He is also sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.2,000/- for the offence punishable under Section 477A of IPC and in default of payment of fine he is sentenced to undergo Simple Imprisonment for one month. The substantive sentence of imprisonment shall run concurrently. He is entitled to get set off under Section 428 of Cr.P.C. Bail bond of the accused is cancelled.”

6. The learned counsel for the appellant/accused argued that the prosecution evidence is quite insufficient to establish the criminal culpability of the accused on the allegation that he had committed the above offences. The first point argued by the learned counsel for the appellant is that the appellant, who originally worked in Kerala Electrical and Allied Engineering Company Ltd., Mamala, was alleged to be deputed as a staff in Kerala Beverages Corporation. But, the prosecution failed to produce the order of deputation of the appellant and therefore, the allegation of the prosecution that the appellant had worked as Shop-in-charge of



Foreign Liquor shop No.FL-1-III, Lissy Junction, Ernakulam, is without any basis. It is argued further that Ext.P36 Bank statement proved through PW7 is the only document relied upon by the prosecution to show that there was failure on the part of the appellant to deposit Rs.5,52,552.80/-. But, Ext.P36 is not properly certified under Section 65B of the Indian Evidence Act, 1872 or under the provisions of the Bankers' Books Evidence Act, 1891 (for short, 'the Act, 1891' hereinafter). Therefore, the same is an inadmissible document, without a certificate. It is pointed out by the learned counsel that in the decision of the Delhi High Court in **Om Prakash v. Central Bureau of Investigation (CBI)** reported in **[(2017) SCC OnLine Del 10249]**, the Delhi High Court addressed the necessity of certificate prepared under the Act, 1891, as amended on 17.10.2002 after referring the definition in Sections 2(8), 2A and Section 4 of the Act, 1891. For clarity, paragraph 18 is as under:

18. *Sections 2(8), 2A and Section 4 of the Bankers' Book*



Evidence Act, 1891 (in short ‘the Act’) read as under:

“2. Definitions. In this Act, unless there is something repugnant in the subject or context,

(8) “certified copy” means when the books of a bank,—

(a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, and where the copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and

(b) consist of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout



together with such statements certified in accordance with the provisions of section 2A.

[(c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2A.]

2A. Conditions in the printout.—A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and

(b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of—

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect



unauthorised change of data;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(F) the mode of identification of such data storage devices;

(G) the arrangements for the storage and custody of such storage devices;

(H) the safeguards to prevent and detect any tampering with the system; and

(I) any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately



derived from, the relevant data.

4. Mode of proof of entries in bankers' books.—Subject to the provisions of this Act, a certified copy of any entry in a bankers' books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.”

7. In the said case, after elaborate discussion on the point in issue in paragraph Nos.20 to 25, the Delhi High Court observed in paragraph No.29 as under, after referring the decision of the Apex Court in **Roman Catholic Mission v. State of Madras** reported in **[AIR 1966 SC 1457]** and other decisions, viz., **Anvar P.V. v. P.K.Basheer** reported in **[(2014) 10 SCC 473]** and **State (NCT of Delhi) v. Navjot Sandhu** reported in **[(2005) 11 SCC 600]**.



“29. A conjoint reading of Section 34 of the Indian Evidence Act, Sections 2(8), 2A and 4 of the Banker's Book Evidence Act and the various pronouncements of the Supreme Court lead to the conclusion that firstly, the prosecution is required to lead admissible evidence to prove the entries in the books of accounts and after having led admissible evidence link the same with other evidence on record to prove the guilt of the accused beyond reasonable doubt. Thus, in case the statements of accounts exhibited on record are accompanied by certificate as envisaged under Section 2A of the Bankers' Books Evidence Act, the statements of accounts would be admissible in evidence. An objection as to the person exhibiting the said statements of account i.e. an objection to the mode of proof and not admissibility, has to be taken at the time of exhibition of the documents. Therefore if certified copies of the statements of accounts have been exhibited as per the requirement of Section 2A of the Act, the statement of account would be admissible and in case no objection to the witness proving the same is taken at the time when the document is exhibited, the document would be validly read in evidence. However, if the statements of accounts have been exhibited without the necessary certificate as contemplated under Section 2A of



the Act, the same being inadmissible in evidence, even in the absence of an objection taken as to the mode of proof during trial, this Court cannot read the same in evidence even though marked as an exhibit.”

8. The learned counsel given much emphasis to the decision of the Apex Court referred in **Omprakash's** case (supra) and the decision in **Roman Catholic Mission's** case (supra) with reference to paragraph No.8.

9. Apart from the above decisions, the learned counsel placed decision of the Apex Court in **R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswami And V.P. Temple And Another** reported in [2003 KHC 1696] with reference to paragraph Nos.20 and 28, wherein, the Apex Court observed as under:

“20. The learned counsel for the defendant respondent has relied on The Roman Catholic Mission v. The State of Madras & Anr. AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from



consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at



the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.



28. Whether a civil or a criminal case, the anvil for testing of 'proved', disproved' and 'not proved', as defined in S.3 of the Indian Evidence Act, 1872 is one and the same. A fact is said to be 'proved' when, if considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists. It is the evaluation of the result drawn by applicability of the rule, which makes the difference.

"The probative effects of evidence in civil and criminal cases are not however always the same and it has been laid down that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. BEST says: There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision: but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required. (BEST, S.95). While civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt." (See Sarkar on Evidence,



15th Edition, pp.58-59) In the words of Denning LJ (Bater v. B, 1950, 2 All ER 458,459)

"It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. So also in civil cases there may be degrees of probability."

Agreeing with this statement of law, Hodson, LJ said "Just as in civil cases the balance of probability may be more readily fitted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others." (Hornal v. Neuberger P. Ltd., 1956 (3) All ER 970, 977)."

10. Another decision of the Madras High Court in **Subbaraman G. and Others v. State** reported in [2018 KHC 3723] with reference to paragraph Nos.20 to 40 to buttress his argument. Another decision of this Court in **Canara Bank v. Sreekumari.K.** reported in [2025 KHC 440] has been pointed out to substantiate the mode of proof of Bank documents, where



this Court addressed the mode of proof in paragraph No.15.

11. In the present case, it is submitted by the learned counsel for the appellant further that Ext. P1, the prosecution sanction proved through PW1, is not in accordance with the mandate of law, as it is necessary for the prosecution to prove that, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority along with the application form. In this regard, the learned counsel for the appellant placed decisions of the Apex Court in **CBI v. Ashok Kumar Aggarwal** reported in [**2013 KHC 4983**] and **State of Karnataka v. Ameer Jan** reported in [**2007 KHC 4045**]. On the above ground, the learned counsel for the appellant vehemently argued that the conviction and sentence imposed on the appellant/accused are liable to be interfered finding insufficiency of sanction.

12. In response to the contention raised by the learned counsel for the appellant regarding necessity of Section 65B



certificate, the learned Public Prosecutor referred to a three-judge bench decision of the Supreme Court in **Sundar @ Sundarrajan v. State by Inspector of Police**, reported in **[2023 KHC OnLine 6287]**, specifically paragraph Nos.41 to 43, to argue that objections regarding the non-production of a Section 65B certificate cannot be raised at the appellate stage if they were not raised during the trial. The Court emphasized that such objections should have been addressed at the earliest opportunity, allowing the prosecution to rectify any defects by producing the necessary document. In this case, the Apex Court considered the ratio laid in the decision in **Sonu Alias Amar v. State of Haryana** reported in **[(2017) 8 SCC 570]** after referring the decisions in **Navjot Sandhu's** case (supra) and **Anvar P.V.'s** case (supra). The relevant paragraph Nos.41 to 43 read as under:

“41.On the other hand, Sonu did deal with the question of whether, at the appellate stage, the reliance upon CDRs can be reconsidered if the objection was not raised during the trial. As the



*counsel for the State of Tamil Nadu has argued, the defense as well did not raise the plea of the CDRs being inadmissible in the absence of a S.65B certificate at the trial or at the appellate stage. On this issue, this Court in **Sonu** noted that:*

32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by S.65 B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is



also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. **The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies.** The learned Senior Counsel for the State referred to statements under S.161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. **We are**



satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in S.65 B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.

(emphasis supplied)

42. While the Court in **Arjun Panditrao Khotkar** did not directly deal with the issue of allowing objections against CDRs, due to a violation of the procedure under S.65B, being raised at a belated stage, it kept it open for trial courts, in exceptional cases, to allow the prosecution to provide such certificate at a later stage. It held that:

54. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an Accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the



*Accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution Under S.91 or 311 of the Code of Criminal Procedure or S.165 of the Evidence Act. **Depending on the facts of each case, and the Court exercising discretion after seeing that the Accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time.** If it is the Accused who desires to produce the requisite certificate as part of his defence, this again will depend upon justice of the case - discretion to be exercised by the Court in accordance with law.*

(emphasis supplied)

*43. Therefore, we are inclined to agree with the ratio in **Sonu** by not allowing the objection which is raised at a belated stage that the CDRs are inadmissible in the absence of a S.65B certificate, especially in cases,*



*where the trial has been completed before 18 September 2014, i.e. before the pronouncement of the decision in **Anvar P.V.** However, we are also mindful of the fact that the instant matter involves the death sentence having been awarded.”*

13. Apart from that, reliance was placed on the decision of the Apex Court in **State of Karnataka v. T.Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi**, reported in **[2023 KHC OnLine 6985]**, to contend that the non-production of a Section 65B certificate on an earlier occasion is a curable defect. It was emphasized that, in such circumstances, the non-production of the certificate can be addressed during the trial stage, allowing an opportunity to cure the defect.

14. Insofar as the challenge against the sanction is concerned, it is specifically pointed out by the learned Public Prosecutor that, in this matter, when Ext.P1 sanction was tendered in evidence by examining PW1, its author. But, PW1 was not cross examined or Ext.P1 was not at all challenged by the



appellant/accused, disputing his insufficiency. For the said reason alone, challenge against the sanction would not lie before this Court. In this connection, the learned Public Prosecutor relied upon the decision of the Apex Court in **Central Bureau of Investigation v. Jagat Ram** reported in **[2024 KHC 6687]**, with reference to paragraph No.6 onwards, to contend that if there is no failure of justice where an error, omission, or irregularity in the order of sanction, by itself, cannot be a ground for reversal by a court of appeal. The learned Public Prosecutor placed particular emphasis on sub-sections 3(a), 4 and 19 of the PC Act, 1988, in this context. Apart from that, reliance was also placed on the decision of this Court in **Pramod Chandran M.C. v. State of Kerala** reported in **[2025 KHC OnLine 904]**, when this Court considered the challenge against sanction before the appellate court and revisional court.

15. It is further argued by the learned Public Prosecutor that, in the decision of **Rajan v. Sharafudheen**, reported in **[2003**



KHC 422], the learned Single Judge of this Court, in paragraph Nos. 15 and 16, observed that strict compliance with the mandate of Section 2(8) of the Act, 1891, is not necessary when the evidence of the official witness of the Bank is available to prove the document. In fact, this decision is not good law in view of the Apex Court decision of the Apex Court in **Anvar P.V.**'s case (supra).

16. According to the learned Public Prosecutor, in this matter, Exts.P15 to P35, original documents showing collection of amounts by the accused with his admitted signatures during the period when the accused was Shop-in-charge of Foreign Liquor Shop No.FL-1-III, Lissy Junction, Ernakulam, categorically proved that the accused held the said post and he had collected the amounts. Thus, entrustment of the amounts on his domain is well established by the prosecution. It is submitted further that, once the entrustment stood proved, the accused has the burden to establish that there was no misappropriation on his part and he



must account for the amounts entrusted to him. In the instant case, the accused failed to discharge this burden, and, in view of the same, he cannot contend that he is innocent. In this matter, the learned Public Prosecutor has placed decision of this Court in **Ravinathan L. v. State of Kerala** reported in **[2023 (4) KHC 530]**. He also submitted that in this situation, even without Ext.P36 bank statement, the offences against the accused are proved beyond reasonable doubt.

17. Coming to the prosecution case, the evidence in this case is confined to that of PW1 to PW10, Exts.P1 to P46. It was through PW1, Ext.P1 sanction was proved. PW1 was not cross examined challenging his evidence in support of Ext.P1 and therefore, the substantive evidence of PW1 and Ext.P1 remains unchallenged.

18. PW2 was the Manager of Kerala State Beverages Corporation Warehouse, Aluva. He gave evidence to the effect that the accused had been working in Kerala Electrical and Allied Engineering Company Limited and from there, he had been deputed to Kerala State Beverages Corporation. According to him, the accused was posted as Shop in-charge of Foreign Liquor outlet



No.FL-1-III at Lissy Junction, Ernakulam, which was under the Warehouse of Tripunithura and the accused had worked as Shop-in-charge in that shop from 06.09.2001 to 29.12.2001. PW2 deposed further that the accused had misappropriated Rs.5,52,549.80/- during the period he worked. He was suspended from the service noticing that he had closed the foreign liquor shop on 24.12.2001 before the expiry of the scheduled time. Later, the records of the shop were verified for fixing the liability and he had preferred Ext.P2 complaint before the Ernakulam North Police Station on 10.4.2002 and he had signed in the Mahazars Exts.P3 and P4 for seizure of the documents from the shop. PW2 further deposed about the short remittance, non-remittance and excess remittance made by the accused. He had also given evidence that accused had made entry in Ext.P5 Bank Remittance Register and Ext.P6 Movement Register regarding the fact that he had gone to the bank to remit the amount and he had signed in that register and he had also signed in daily wages and cash statement registers, which were marked as



Exts.P15 to P35, showing the closing balance after completing the sales on each day and the accused had signed in those statements as Shop-in-charge. He had also given evidence that the shop in-charge had to remit the net amount after deducting the expenses from the daily collected amount in Dhanalakshmi Bank, Kaloore on the next day and the accused had defaulted remittance of the amount and on several occasions he had made belated remittance after keeping the amount in his custody for several days and he had also given statement that the person, who had audited the account has prepared the statement showing the details of the short remittance, non-remittance and excess remittance made by the accused and a copy of that statement was produced along with the complaint filed by him. He had also given evidence that one Sivadasan was the person who had been working as Shop-in-charge of this shop and the accused had taken over the charge from Sivadasan and he had made entry to that effect in Exhibit P12 document. During cross examination of PW2 nothing extracted to disbelieve him.



19. PW3 examined in this case was the officer, who conducted auditing in the shop. He gave evidence that he had been working as the member of the audit team of Kerala State Beverages Corporation Warehouse, Aluva and the accused was suspended from the service as he had closed the shop on the Christmas day prior to the expiry of the time for closing the shop and he had audited the account and found that an amount of Rs.5,52,552.80 was misappropriated by the accused and he had prepared Ext.P13 statement showing the details of the non-remittance, excess remittance and short remittance and also belated remittance. He testified further that the accused had signed in the bank remittance register which was marked as Ext.P5 and Movement Register which was marked as Ext.P6 and they would reveal that the accused was the person, who used to go to the bank for remitting the cash. He had also given evidence that the liquor was supplied from the Tripunithura Warehouse based on the Goods Transport Note, and the same was required to be sold in accordance with the price list



issued by the Head Office at Thiruvananthapuram, and that vouchers for daily expenses were to be prepared and attached to the daily wages and cash statements. In fact, while cross examining PW3 nothing extracted to disbelieve his version.

20. PW4, PW5 and PW6 examined by the prosecution were the workers of the foreign liquor shop No.FL-1-III, where the accused worked as Shop-in-charge. According to them, the accused was working as the shop in-charge in foreign liquor shop No.FL-1-III at Lissy Junction, Ernakulam. While working in that establishment, PW4 deposed that the accused took charge as Shop-in-charge from one Sivadasan, and both Sivadasan and the accused had signed Ext.P12 when the stock was handed over. Further, Exts.P15 to P35, comprising daily wages and cash statements maintained in the shop, were prepared and signed by the accused, who had also used to remit the amounts to the bank. He used to remit the amount in the bank as the person working as shop-in-charge and the accused had signed in Ext.P6 Movement Register



which would show the entry regarding the person going out of the shop on each day and all the signatures seen in that Ext.P6 document against the name T.C.Bennet was put by the accused.

21. PW7 was the Manager of Dhanalakshmi Bank, Kaloore and he deposed about the account statement regarding the remittance made from the shop from 01.09.2001 to 29.12.2001 and it was certified by him. Accordingly, Ext.P36 tendered in evidence through him. He deposed further that Ext.P36 was the computer print out of the statement and he had handed over that document as per Ext.P37 Mahazar.

22. PW8 was the worker of the Kerala Electrical and Allied Engineering Company Limited and he had given evidence that he knew the accused and the accused had worked in that establishment in Welding Section.

23. PW9 was the Circle Inspector of Ernakulam Town Police Station who had registered the crime No.180/2002. He testified that he had registered Ext.P38 F.I.R., based on a complaint received



by him from PW2 and he had conducted the investigation and arrested the accused and produced him before the Judicial First Class Magistrate - II, Ernakulam after preparing Ext.P39 custody memo and Ext.P40 Arrest Memo and Ext.P41 remand report. He had also given evidence that he had submitted Ext.P42 report for including the full name of the accused in Ext.P38 F.I.R. Thus, PW9 generally supported the registration of crime and the part of the investigation he conducted.

24. PW10 was the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Ernakulam, who had conducted the investigation. He had given evidence that based on a complaint preferred by PW2 against the accused, Ernakulam Town North Police Station had registered crime No.180/2002 under Sections 409 and 420 of the IPC against the accused. Subsequently, based on the request made by the Circle Inspector of North Police Station that the case had to be investigated by the Vigilance Department, the investigation had been taken over by him and vigilance Crime



No.3/2002/Ernakulam had been registered under Section 13(1)(c) r/w Section 13(2) of the PC Act, 1988 and Sections 409 and 420 of the IPC and Ext.P43 F.I.R. had been registered by him and he had seized Exts.P5 and P6 documents as per Ext.P2 Mahazar and Exts.P7 to P34 documents as per Ext.P4 Mahazar and Ext.P36 document as per Ext.P37 Mahazar and Ext.P35 document as per Ext.P44 Mahazar. He had obtained Ext.P1 Sanction Order for prosecuting the accused and also personal particulars from KEL regarding the accused, which was marked as Ext.P45. Subsequently, he had filed the report to include Section 477A of the IPC as per Ext.P46.

25. Adverting to the first question argued by the learned counsel for the appellant contending that no evidence forthcoming to hold that he was deputed as a staff in Kerala Beverages Corporation and in turn, he had worked as the Shop-in-Charge of Foreign Liquor Shop No. FL-1-III, Lissy Junction, Ernakulam, it is discernible that the order, deputing the appellant from Kerala



Electrical and Allied Engineering Company Ltd., to Kerala Beverages Corporation, not tendered in evidence. A perusal of the evidence of PW10, the Investigating Officer, it could be gathered that, at the time when he was examined, a copy of deputation order was attempted to be tendered in evidence. But, the Special Court disallowed the same, since the same was objected by the learned counsel for the accused holding that the same was only a photocopy. When considering the question as to whether the appellant worked in Kerala Beverages Corporation as Shop-in-Charge of Foreign Liquor Shop No.FL-1-III, Lissy Junction, Ernakulam, even without the order of deputation, direct documentary evidence in abundance could be gathered. That is to say, Exts.P15 to P35 were the daily wages and cash statement registers during the relevant period tendered in evidence through PW2 to show that the accused collected the amount and kept the same by putting his signatures therein and he was the person used to go to the Bank and collecting the same, as evident from Ext.P6 Movement Register and Ext.P5



Bank Remittance Register. In addition to that, PW3 also deposed in support of Exts.P5 and P6. As per Ext.P6, the accused was the person gone to the Bank for the remittance of the amount. That apart, Ext.P12 stock hand over list would show that the accused took in charge of the stock from Sivadasan, who was the Shop-in-charge earlier, supported by the evidence of PW4, PW5 and PW6. As regards Exts.P15 to P35, apart from PW2 and PW3; PW4, PW5 and PW16 given evidence with consistent assertions that Exts.P15 to P35 statements were prepared and signed by the accused, who used to remit the amounts in the Bank. Thus, the contention raised by the learned counsel for the appellant that the prosecution failed to prove that the accused worked as Shop-in-charge of Foreign Liquor shop No.FL-1-III, Lissy Junction, Ernakulam, is an argument without any substance and the same is repelled being absolutely meritless.

26. Now comes the second important challenge raised by the learned counsel for the appellant regarding admissibility of Ext.P36



which either would have been certified under Section 65B of the Indian Evidence Act, 1872 or under the provisions of the Bankers' Books Evidence Act, 1891. In this connection, going by the decisions extracted hereinabove, it could be gathered that in the **Roman Catholic Mission's** case (supra), referred by the Apex Court in **R.V.E.Venkatachala Gounder's** case (supra), the Apex Court held that ordinarily an objection to the admissibility of the evidence should be taken when it would be tendered in evidence and not subsequently. It was held further that the objection as to admissibility of documents in evidence could be classified into two classes, viz., (i) *an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.* In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised



even at a later stage or even in appeal or revision. That is to say, a totally inadmissible document when tendered in evidence, even without objection, its total inadmissibility can be challenged before the appellate court or revisional court also even without objecting the same before the trial court and the rationale is that the document lacks evidentiary value, as it was a document of inadmissible nature. But, in the second category, the objection should be taken before the evidence would be tendered and once the document had been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document would be irregular, could not be allowed to be raised at any stage subsequent to the marking of the document as an exhibit, i.e., at the appellate or revisional stage. That is to say, in the second category, a document with some defects including want of certification, if tendered in evidence without objecting the same before the trial court, disallowing opportunity to the party tendered the document in



evidence to cure the defect to make it as fully admissible, that challenge cannot be raised before the appellate or revisional court without raising the same before the trial court. To put it otherwise, the crucial test is whether an objection, if taken at the appropriate point of time would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. This omission to object become fatal because by his failure, the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the



objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure are fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in higher Courts.

27. Exactly, the same principle has been stated in **Sundar @ Sundarrajan**'s case (supra), cited by the learned Public Prosecutor. The rationale is CDRs or bank statements generated from electronic device are not inherently admissible in evidence. When the objection is that those documents were marked before the trial court without a certificate required under Section 65B(4) or under the Bankers' Books Evidence Act, 1891, should have been raised before the trial court itself with an opportunity to the party who tendered the said evidence to cure the defect then and there



itself. To put it differently, when marking of a document for want of certificate under Section 65B(4) of the Indian Evidence Act, 1872 or under the Act, 1891 or its insufficiency is a point to be raised before the trial court with an opportunity to the opposite party to rectify the deficiency and to make the document as reliable to be acted upon in its full vigor. Thus, though objection regarding the admissibility of documents which are *per se* inadmissible or inherently inadmissible could be taken at the appellate stage or revisional stage, even without raising objection before the trial court, as it is a fundamental issue, as regards non-production of certificates or its insufficiency if not taken before the Special Court, denying opportunity to the party tendering the evidence to cure the defect, such objection could not be raised at the appellate or revisional stage. Thus, the contention raised by the appellant as regards to inadmissibility of Ext.P36 for want of certificate under Section 65B(4) of the Indian Evidence Act, 1872 or under the Act, 1891, could not be considered at the appellate stage. Adverting to



Ext.P36, it is emphatically clear that a certificate certifying the same as the true extract of the bank statement could be found on the statement supported by the evidence of PW7, though the same is not strictly in accordance with the mandate of the Act, 1891, as amended on 17.10.2002 after referring the definition in Sections 2(8), 2A and 4 of the Act, 1891. In such view of the matter, this challenge also is set at rest.

28. The contra view taken by the Delhi High Court in **Om Prakash**'s case (supra) could not be accepted for the above reasons. Further, the same has only persuasive value as far as this Court is concerned.

29. Coming to the next challenge raised by the learned counsel for the appellant, as regards to insufficiency of Ext.P1 prosecution sanction proved through PW1, as rightly pointed out by the learned Public Prosecutor, when Ext.P1 was tendered evidence through PW1, no cross examination effected challenging the same. Thus, the substantive evidence in



this regard remains unchallenged.

30. It is pertinent to note the principles laid down by the Apex Court in **Paul Varghese v. State of Kerala** reported in **[2007 (2) KHC 400 : JT 2007 (5) SC 525 : 2007 (2) KLT 529]** and **State by Police Inspector v. T. Venkatesh Murthy** reported in **[(2004) 7 SCC 763]**, is that the validity of sanction does not, by itself, affect the validity of the proceedings. A defect, omission, or irregularity in the sanction would warrant interference only if the court is satisfied that such defect has resulted in a failure of justice.

31. In **State of Goa v. Babu Thomas** reported in **[2005 KHC 1803 : 2005 (4) KLT SN 87 : 2005 (8) SCC 130 : AIR 2005 SC 3606]**, the Apex Court distinguished the decision in **State by Police Inspector v. T.Venkatesh Murthy's** case (supra) and held in paragraph 11 as under:

11. Referring to the aforesaid provisions, it is



contended by learned counsel for the appellant that the Court should not, in appeal, reverse or alter any finding, sentence or order passed by a special Judge on the ground of the absence of any error, omission or irregularity in, the sanction required under sub-section (1), unless the Court finds a failure of justice has in fact been occasioned thereby. In this connection, a reference was made to the decision of this Court rendered in the case of State v. T. Venkatesh Murthy (2004) 7 SCC 763 : (2004) SCC (Cri) 2140). Reference was also made to the decision of this Court in the case of Durga Dass v. State of H.P. (1973) 2 SCC 213 : (1973) SCC (Cri) 762) where this Court has taken the view that the Court should not interfere in the finding or sentence or order passed by a special Judge and reverse or alter the same on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless the Court finds that a failure of justice has in fact been occasioned thereby. According to the counsel for the appellant no failure of justice has occasioned merely because there was an error, omission or irregularity in the sanction required because evidence is yet to start and in that



view the High Court has not considered this aspect of the matter and it is a fit case to intervene by this Court. We are unable to accept this contention of the counsel. The present is not the case where there has been mere irregularity, error or omission in the order of sanction as required under sub-section (1) of Section 19 of the Act. It goes to the root of the prosecution case. Sub-section (1) of Section 19 clearly prohibits that the Court shall not take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction as stated in clauses (a), (b) and (c).

32. Reference may also be made to the decision of the Apex Court in **Nanjappa v. State of Karnataka** reported in [(2015) 14 SCC 186]. In paragraph 22 of the said judgment, the Apex Court held as under:

22. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the court against a public



servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid, the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

33. In the latest decision of the Apex Court reported in **[2025 INSC 654] Dashrath v. The State of Maharashtra**, the Apex Court referred **Neeraj Dutta v. State (Govt. of NCT of Delhi)** and the decision reported in **[(2015) 2 SCC 33] Manzoor Ali Khan v. Union of India**, and held in paragraph Nos.12 and 13 that, *it is no longer res integra that requirement of sanction has a salutary object. Provisions requiring sanction to prosecute, either*



*under Section 19, PC Act or Section 197 of the (now repealed) Cr. PC or under Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are intended to protect an innocent public servant against unwarranted and mala fide prosecution. Indubitably, there can be no tolerance to corruption which has the effect of undermining core constitutional values of justice, equality, liberty and fraternity; however, at the same time, the need to prosecute and punish the corrupt is no ground to deny protection to the honest. This is what was held by this Court in its decision in **Manzoor Ali Khan v. Union of India** while repelling a challenge raised in a Public Interest Litigation to the constitutional validity of Section 19 of the PC Act. Even otherwise, merely because there is any omission, error or irregularity in the matter of granting sanction, that does not affect the validity of the proceedings unless the court records its own satisfaction that such error, omission or irregularity has resulted in a failure of justice.*

34. In another decision of the Apex Court reported in [2025



INSC 50], The State of Punjab v. Hari Kesh, after referring the decision of the Apex Court in **State of Karnataka Lokayukta Police v. S.Subbegowda** reported in **[(2023) 17 Supreme Court Cases 699 : 2023 SCC OnLine SC 911]**, the Apex Court considered the combined effect of sub-sections (3) and (4) of Section 19 and reiterated that, *in view of sub-section (3) clearly forbids the court in appeal, confirmation or revision, the interference with the order passed by the Special Judge on the ground that the sanction was bad, save and except in cases where the failure of justice had occurred by such invalidity.*

35. Going by the decisions extracted hereinabove, majority of the decisions would emphasize the point that, failure of justice if not occasioned, by way of the absence of, or any error, omission or irregularity in sanction, the same by itself is not a ground to interfere the finding, sentence or order passed by the Special Judge. It is the fundamental principle of interpretation of statute that, when provisions of a statute are interpreted, the interpretation



should be by giving effect to all the provisions, without making any of the provisions redundant or inoperative. Thus, contra view if taken, the same is akin to making sub-section 3(a) of Section 19 of the PC Act, 1988, redundant.

36. In the instant case, Ext.P1 sanction appears to have been issued by PW1 after due application of mind. In the facts of the case, no failure of justice can be found to hold that the finding of the Special Judge to the effect that Ext.P1 sanction is sufficient, since no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby, as provided under Section 19(3)(a) of the PC Act, 1988. That apart, as provided under Section 19(4) of the PC Act, 1988, in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction



has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

37. Coming to the prosecution allegation, in this case, Ext.P2(b) statement supported by Exts.P15 to P35 and Ext.P36 would show that the accused collected the amount covered by Exts.P15 to P35 during his tenure as Shop-in-Charge of Foreign Liquor Shop No. FL-1-III, Lissy Junction, Ernakulam. Further, he was duty bound to deposit the same in the Bank. When Ext.P36 Bank Statement, supported by the evidence given by PW7, it was found that Rs.5,52,549/- failed to be deposited by the accused.

38. In the instant case, as argued by the learned Public Prosecutor, insofar as entrustment of the amount collected as per Exts.P15 to Exts.P35 are concerned, the prosecution established that it was entrusted to the accused, Ext.P6 movement register would show that it was the accused who had been remitting the amount to the Bank, even though it is argued by the learned counsel for the appellant that



entrustment is not proved. In fact, the argument of the learned counsel for the appellant that entrustment was not proved is as against the prosecution evidence, as it is discernible from the prosecution evidence discussed in abundance that there was entrustment and collection of money by the accused during the relevant period. As per Ext.P36, in fact, the prosecution proved non deposit of the money entrusted to him, though it is the burden of the accused to account for or to explain what happened to Rs.5,52,549/-, he got entrusted.

39. As far as the offence under Section 409 of the IPC is concerned, it is relevant to consider what are the essentials to be proved to complete an offence under Section 409 of IPC. In the decision reported in **[(2012) 8 SCC 547 : AIR 2012 SC 3242]** **Sadhupati Nageswara Rao v. State of Andhra Pradesh**, the Apex Court held that, *in order to sustain a conviction under section 409 of the Indian Penal Code, 1860, two ingredients are to be proved: namely: (i) the accused, a public servant or a banker or*



agent was entrusted with the property of which he is duty bound to account for; and (ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under section 405 IPC. The basic requirement to bring home the accusations under section 405 IPC are the requirements to prove conjointly (i) entrustment and (ii) whether the accused was actuated by a dishonest intention or not, misappropriated it or converted it to his own use or to the detriment of the persons who entrusted it.

40. That apart, it is also the essential requirement that, it should be shown that the accused has acted in the capacity of a public servant, banker, merchant, factor, broker, attorney or agent, as held by the Apex Court in the decision reported in **[2015 CrLJ 4040 : (2015) 3 SCC (Cri) 724 : (2015) 8 Scale 95]**, **Robert John D'Souza v. Stephen V Gomes**.

41. It is equally the well settled law that, once it is proved by the prosecution that there was entrustment of property and there



was no proper accounting of the entrusted property, then the burden is on the accused to prove that there was no misappropriation and to explain what happened to the property so entrusted. When the accused fails to discharge his burden or failed to explain or account for the misappropriated property, the accused is said to have committed the offences of criminal breach of trust and misappropriation. The fraudulent intention of the accused could be inferred from the attending circumstances from the evidence adduced and the same could not always be proved by direct evidence. Thus, the law on the point is that, prosecution has the duty to prove entrustment of property to the accused and then it is the duty of the accused to account for the same or to explain the same. The same ingredients of criminal breach of trust and misappropriation have to be proved by the prosecution for convicting the accused for the offences punishable under Section 13(1)(c) of the P.C. Act, 1988 as well. Decisions reported in **Jaikrishnadas Manohardas Desai and Another v. State of**



Bombay, 1960 KHC 694: AIR 1960 SC 889: 1960 (3) SCR 319: 1960 CriLJ 1250, **Krishan Kumar v. Union of India**, 1959 KHC 635: AIR 1959 SC 1390: 1960 (1) SCR 452: 1959 CriLJ 1508, **State of Kerala v. Vasudevan Namboodiri**, - 1987 KHC 518: 1987 (2) KLT 541: 1987 KLJ 270: 1987 (1) KLT SN 7, **Bagga Singh v. State of Punjab**, - 1996 KHC 3288: 1996 CriLJ 2883 (SC), **Vishwa Nath v. State of J. & K**, 1983 KHC 420: AIR 1983 SC 174: 1983 (1) SCC 215: 1983 SCC (Cri) 173: 1983 CriLJ 231, **Om Nath Puri v. State of Rajasthan**, 1972 KHC 414: AIR 1972 SC 1490 : 1972 (1) SCC 630: 1972 SCC (Cri) 359: 1972 (3) SCR 497: 1972 CriLJ 897, **T. Ratnadas v. State of Kerala**, - 1999 KHC 2074: 1999 CriLJ 1488, **State of Rajasthan v. Kesar Singh**, 1969 CriLJ 1595, **Roshen Lal Raina v. State of Jammu & Kashmir**, 1983 KHC 584: 1983 (2) SCC 429: AIR 1983 SC 631: 1983 SCC (Cri) 533: 1983 CriLJ) 975 and **Raghavan K v. State of Kerala**, 2012 KHC 420 are in support of this view.

42. Therefore, it can be gathered that in the instant case, the



accused did not offer any explanation or did not account for the amount of Rs.5,52,549/-, alleged to be misappropriated after getting its entrustment. In that view of the matter, the finding of the Special Court that the accused committed offences punishable under Sections 409, 420 and 477A of the IPC as well as Sections 13(1)(c) and 13(1)(d)(ii) r/w Section 13(2) of the PC Act, 1988 is only to be justified. Therefore, the conviction does not require any interference.

43. Coming to the sentence, the maximum sentence imposed by the Special Court was for two years for the offence punishable under Section 13(1)(c) r/w Section 13(2) of the PC Act, 1988. Having considered the gravity of the offence committed, the said sentence found to be justifiable. Therefore, reduction of sentence for the other offences found to be unnecessary, since substantive sentence will stand concurrently. Thus, there is no reason to interfere the sentence imposed by the Special Court. Thus, the sentence also stands confirmed.



Therefore, this appeal fails and is accordingly dismissed. Consequently, the order suspending sentence and granting bail to the accused/appellant stands cancelled and his bail bond also stands cancelled. The accused/appellant is directed to surrender before the Special Court to undergo the sentence, forthwith, failing which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment to the Special Court, for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

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