MHNS240007492022	Presented On	:	01.04.2022
	Registered On	:	01.04.2022
	Decided On	:	11.06.2026
	Duration	:	Y M D 04 02 10

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SATANA, NASHIK. (Court No.3)

(Presided over by Madhusudan Dinkar Mahadik)

S.C.C. No. 323/2022

Exh. No.46

Sambhaji Motiram Wagh,
Age: 45 years, **Occupation**: Farmer,
Address: Dhabgar Galli, Satana,
Taluka – Baglan, District – Nashik

...Complainant

:: Versus ::

Dattu Bhika Shelar, Age: 44 years,
Occupation: Farmer and Commission Agent.
R/O Wadel, Tal. Malegaon, District – Nashik

...Accused

....

Appearance: -

Ld. Advocate for the Complainant — Shri. S.R.Ahire

Ld. Advocate for the Accused — Smt. D.M.Motwani

....

Offence Punishable Under Section 138 of Negotiable Instruments Act, 1881.

J U D G M E N T

(Delivered on 11 June 2026)

The accused is prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 **(hereinafter referred to as 'N.I. Act' for short).**

The case of the complainant is summarized as under: -

02. The complainant is a farmer. He wanted to purchase agricultural land out of his agricultural profits. The accused is a real estate agent. He was introduced to him by a friend named Bhaskar Dhabale. The complainant contacted the accused. Then the accused advised him to buy land in Garbad village, Taluka Malegaon. The complainant trusted his advice. The accused then made the complainant sign false documents. The accused took Rs. 13,50,000/- from the complainant. However, the accused did not complete the deal. This happened in 2017. The complainant repeatedly asked for his money back. On 09/11/2021, the accused gave a cheque bearing no.030904 of Rs. 13,50,000/- dated 16/11/2021 from Bank of Maharashtra, branch Ajang Wadel having account no.20213614433.

03. It is further contended that the complainant deposited said cheque in Union Bank of India, Satana branch. On 22/11/2021 the said cheque dishonored for insufficient funds. A return memo was issued accordingly. On 10/12/2021, the complainant issued a demand notice by RPAD. On 15/12/2021, the notice was returned, as the accused refused to accept it. On 01/02/2022, following the accused's instruction, the complainant re-deposited the cheque. On 02/02/2022, it dishonored again for insufficient funds. On 28/02/2022, another demand notice was issued. On 11/03/2022, the notice was received by the accused, but he still did not pay. Therefore, the complainant filed the complaint.

04. The complainant was examined under Section 200 of Code of Criminal Procedure **(herein after referred as "Cr.P.C.").** Accordingly, process came to be issued against the accused as per section 204(1)(a) of Cr.P.C. for the offence punishable under Section 138 of N.I. Act. After appearance of accused, the particulars of the offence were explained to the accused Vide **Exh.19**, to which he pleaded not guilty and claimed to be tried. During the trial the accused was on bail.

05. Considering the matters before this Court, following points arise for determination. Decision on them is recorded for reasons to follow;

Sr.No.	**Points**	**Findings**
1.	Does the complainant prove that, on 16.11.2021 the accused issued cheque bearing no.030904 to the complainant in discharge, in whole or in part, of any debt or legal liability *viz;* the repayment of loan?	**No**
2.	Does the complainant prove that, the cheque was dishonored due to funds insufficient?	**No**

3.	Does the complainant prove that, he made demand for payment of the cheque amount by issuing notice in writing to the accused within statutory period?	**Yes**
4.	Whether the demand notice was duly served on the accused?	**Yes**
5.	Does the complainant prove that, the accused has committed the offence punishable under section 138 of N.I. Act?	**No**
6.	What Order?	**The accused is acquitted.**

06. In buttress to the contention, the complainant has examined himself at **Exh. 20.** Further, the complainant has placed reliance on the following documents -

Sr.No.	**Description of Documents**	**Exhibit No.**
1	Original copy of Cheque bearing cheque bearing no.030904 Bank of Maharashtra.	**23**
2	Return Memo Dated 22/11/2021	**24**
3	Office copy of Demand Notice dated 17.11.2021.	**25**
4	Postal Receipt	**26**
5	Postal Envelope	**27**
6	Demand Notice 28/02/2022	**28**
7	Postal receipt	**29**
8	Postal Acknowledgement	**30**

Thereafter, the complainant closed his evidence by filing pursis at **Exh.33**. Incriminating evidence pointed out to the accused; accordingly, his statement recorded as per Section 313(1)(b) of Cr.P.C at **Exh. 41.**

07. Heard both the side. The complainant has filed his written argument notes **(Exh. 44).** He reiterated the contents of his complaint. Apart from the contents of the complaint, he argued that the accused had assured the complainant that possession of the landed property would be handed over to him. Further, his name would be entered in the 7/12 extract of the said property. The accused claimed that the property is non-transferable as it belongs to tribal persons. Original owner Dada Gangaram and his son Jitendra have raised objections to the said sale deed. The accused executed a false and fraudulent sale deed in his favour. A dispute regarding the said landed property was pending. RTS Revision No. 57/2017 is decided and a copy of the judgment therein has filed on record. According to the complainant, the transaction still remains incomplete.

08. It is further argued on behalf of the complainant that he has produced the 7/12 extract on record. There is a substantial difference between the earlier 7/12 extract and the present 7/12 extract of the property. The accused has not replied to the demand notice issued by the complainant. Hence, it can be presumed that the accused has admitted his liability and he has no defence left. Therefore, the complainant has prayed for conviction of the accused in accordance with law.

09. The Ld. Advocate on behalf of the accused vehemently argued that the complainant failed to prove the return memo dated 02/02/2022 regarding dishonour of the cheque. The earlier return memo of the year 2021 was exhibited at Exh. 24. However, the complainant failed to properly prove the subsequent return memo on the basis of which the present cause of action allegedly arose. It was therefore argued that, in absence of proper proof of dishonour as required under Section 146 of the Negotiable Instruments Act, no statutory presumption can be drawn against the accused regarding dishonour of the cheque dated 02/02/2022. The complainant has not given any explanation for non-production of the relevant return memo. According to the accused, the return memo placed on record is doubtful as it does not bear any proper seal or signature of the concerned bank. Hence, the complainant has failed to properly establish the dishonour of the cheque.

10. The Ld. Advocate of the accused further argued that an important witness, namely Bhaskar Dabale is not examined by the complainant. Therefore, an adverse inference is required to be drawn against the complainant. The complainant suppressed material facts regarding execution of the sale deed in the year 2017. Though the said fact was within the special knowledge of the complainant as contemplated under Section 106 of the Indian Evidence Act, the complainant failed to produce the said sale deed before the Court. Therefore, according to the accused, adverse inference is to be drawn against the complainant. It was further argued that the cheque in question was admittedly issued only for security purpose. After completion of the transaction and execution of the sale deed, the complainant ought to have returned the said cheque. However, the complainant failed to return the cheque and subsequently misused the same after a lapse of about five years.

11. It is further argued that the entire sale consideration had already paid to the original landowner. Now, there is no legally enforceable debt or liability against the accused. The original landowner has nowhere alleged non-payment of sale consideration. Therefore, there is no legally enforceable debt against the accused. The transaction between the parties had already been completed. The complainant had no right to recover the amount of the security cheque. Moreover, no legal action was initiated by the complainant against the accused from the year 2017 till 2022. There is no valid cause of action against the accused and therefore prayed for acquittal of the accused.

R E A S O N I N G

12. Followings are essential ingredients of punishable under section 138 of N.I. Act.

i) Issuance of the cheque,

ii) Presentation of the cheque to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier,

iii) Returning of the cheque unpaid by the drawee bank,

iv) Giving notice in writing to drawer of cheque demanding payment of cheque amount within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid., and

v) Failure of drawer to make payment within 15 days of the receipt of notice.

vi) If accused fail to make payment within 15 days of receipt of notice the complainant shall file complaint within 1 month.

13. As per settled criminal law, the complainant ought to prove that the accused issued the said cheque in order to discharge of his legally enforceable debt. Further, standard of proof to prove guilt of the accused is beyond reasonable doubt. However, as per sections 118, 139 and 146 of the Act certain presumptions are laid down in favour of the complainant. These presumptions reduce burden from shoulder of the complainant. Needless to mention that before took recourse of aforesaid Sections, the complainant is bounded to prove some foundational facts. If he succeeds to prove the same, definitely aforesaid section will helpful to him. For ready reference I reproduce aforesaid section one by one.

14. Section 118 of N.I.Act provides for seven different kinds of presumptions which includes presumption of consideration, presumption as to date, presumption as to time of acceptance, presumption as to time of transfer, presumption as to order of indorsements, presumption as to stamps and presumption that the holder is a holder in due course.

15. Section 139 of N.I.Act provides for the Court to presume that, holder of cheque received it for discharge, in whole or in part, of any debt or other liability.

16. Presumption under section 146 of N.I.Act provides that, when a bank's slip or memo having thereon official mark denoting that cheque is dishonoured is produced before Court, the Court shall presume the fact of dishonour of such cheque, unless and until such fact is disproved.

17. Further, it is necessary to mention that aforesaid presumptions are not absolute or irrebuttable. Per contra, accused can rebut those presumptions. There are three modes open for accused to rebut these presumptions. Firstly, from admissions during cross-examination of complainant’s witnesses. Secondly, by bringing circumstances on record which make complainant’s case improbable. Thirdly, by leading evidence in defence. It is not at all mandatory for accused to lead evidence in defence to rebut these presumptions. Accused has option for any one or a combination of any two or three of the modes supra. However, if the mode/s adopted by accused fails, then another mode/s must be availed and if not availed, then it becomes adverse situation for accused. Accused is not required to prove his defence beyond reasonable doubt. Accused is merely to show that, his defence is probable and on the test of preponderance of probability.

18. There are four stages for accused to putforth his defence. Firstly, after service of demand notice accused has opportunity to send a reply to demand notice and pose his defence. Secondly, during cross examination of complainant's witnesses. Thirdly, during examination under section 313(1)(b) of Cr.P.C. and lastly if he opts to lead evidence in defence, then by way of his defence evidence. With the aid of these four opportunities, it is for accused to merely show that his defence is probable and thereby rebut the presumptions supra. With this background of legal position, it needs to evaluate evidence adduced by the complainant.

As to Point No. 1 :-

19. The complainant Sambhaji Motiram Wagh (C.W.1) filed his evidence affidavit at Exh.20. In his evidence affidavit, he reiterated the contents of the complaint. During his cross-examination, the complainant admitted that Bhaskar Dhabale had informed him regarding the sale of agricultural land bearing Gat No. 77/2 situated at village Garbad. He further admitted that the name of Dnyandeo Sonu Deore was reflected in the revenue record of the said property. Thereafter, the complainant approached Dnyandeo Deore and negotiations took place in respect of the sale of the said land for a total consideration of Rs. 13,50,000/-. However, on that day, no agreement or deed was executed between the parties. The accused was also present at the relevant time. The complainant admitted that the said transaction was the only transaction that had taken place through the intervention of Bhaskar Dhabale and the accused.

20. The complainant further admitted that, after payment of Rs. 13,50,000/-, the sale deed in respect of the said property was executed on 25/04/2017. He admitted that he had not issued any public notice in the newspaper prior to execution of the sale deed. He further admitted that Dnyandeo Deore executed the sale deed. The complainant admitted that prior to execution of the sale deed, no agreement had been executed between himself and the accused. The accused had shown him a false 7/12 extract. He admitted that he had not lodged any complaint alleging fraud against the accused.

21. The complainant further admitted that he was willing to produce the sale deed on record. He admitted that he had not paid any commission to the accused in relation to the said transaction. He further admitted that no transaction took place between him and the accused after execution of the sale deed. According to him, he handed over an amount of Rs. 13,50,000/- to the accused at the office of the Sub-Registrar, Malegaon, out of which some amount was paid in cash and the remaining amount through cheque. However, no receipt or acknowledgment was obtained or prepared in respect of the said payment. He further admitted that he had not shown recovery of the amount of Rs. 13,50,000/- in his income tax returns. He also admitted that no demand notice had been issued by him during the period from 2017 till 28/02/2022. The complainant further admitted that he had not produced any bank record to establish payment of amount to the accused through cheque.

22. The complainant further admitted that he had not instituted any suit for recovery of money against Dnyandeo Deore, since the sale transaction in respect of the land had already been completed. He also admitted that he had not issued any notice to the accused prior to filing of the present complaint. Further, he admitted that he had not produced on record the documents which were allegedly forged or fabricated by the accused.

23. The complainant further admitted that the disputed cheque had been issued and handed over to him as security in respect of the transaction pertaining to the agricultural land situated at village Garbad. He further admitted that, upon completion of the transaction, he was under an obligation to return the said cheque. However, the cheque was not returned as the transaction had remained incomplete.

24. After perusal of entire evidence of the complainant, it is pertinent to note that the accused has not denied issuance of the cheque. Furthermore, the accused has not disputed his signature on the cheque (Exh.23). Further, the accused has put defence that the cheque was issued for security purpose of the transaction. In these circumstances, the presumption envisaged in Section 118 of the N.I. Act can be legally inferred that, the cheque was made over for consideration, on the date which the cheques bears. Similarly, Section 139 of the N.I. Act enjoins the court to presume that, the holder of the cheque received it for discharge of debt or liability. Therefore, the burden to rebut the aforesaid presumptions lies on accused. Hon'ble Apex Court was pleased to observe in the case of **Ranggappa ..Vs.. Mohan (AIR 2010 SC 1898)** that the presumption mandated by Section 139 of the N.I. Act includes the existence of legally enforceable liability in favour of the complainant. It is further observed that, the presumption under Section 139 of the N.I. Act also includes the existence of legally enforceable liability and the burden on accused is to specifically establish that, there was no legally enforceable debt as contended by the complainant. Therefore, it is necessary to analyze the evidence on record to find out whether, the accused has come with the probable defence.

25. Perused entire material on record. The main issue in this matter is whether the cheque amount of Rs. 13,50,000/- was issued towards a legally enforceable debt or liability. Initially, the complainant contended that the accused fraudulently took Rs. 13,50,000/- on the false promise to sale agricultural land to him. Further it is contended that, the transaction never completed. However, during cross-examination, the complainant admitted that the agricultural land transaction had taken place. The sale deed was executed on 25/04/2017 by seller Dnyandeo Deore. It is pertinent to note that these very basic and essential facts are supressed in the complaint as well as in the evidence affidavit. At the time of the cross examination, the complainant admitted the fact of execution of sale deed. It clearly shows that the complaint has not disclosed entire facts of the transaction. Moreover, the complainant has not produced the sale deed despite he shown his willingness to produce it during his cross examination. The complainant has supressed material facts. Consequently, it is clear that the complainant has not come with clean hands to claim relief in court. All these factors weaken the original case of the complainant.

26. Admittedly, the accused is not land owner of alleged transaction. He is real estate agent. Dnyandeo Deore was the land owner. The complainant admitted that he did not file any civil suit for recovery of money against the land owner. Further his evidence shows that the consideration amount was paid to the land owner and not to the accused. Further, the said transaction was taken place in year 2017. If such transaction was remained incomplete then the complainant never objected for the same against original owner till date. Further, he has not taken any legal action in order to recover his consideration amount from him. He has not produced any legal notice showing he had claimed such amount from the land owner as transaction remained incomplete. Moreover, the complainant has not disclosed details and particulars of their deal. He has not produced the alleged document which the accused made him to sign. Further, the complainant has not given description of said document in his complainant as well as in his evidence affidavit. All these factors further weaken the case of the complainant.

27. The complainant further admitted that there was no written agreement between himself and the accused regarding payment of Rs. 13,50,000/-. He also admitted that no receipt or acknowledgment was obtained when the amount was handed over to the accused at the Sub-Registrar office. The complainant has not produced bank records to prove payment through cheque. He admitted that the amount was not reflected in his income tax returns. The complainant has paid such huge amount to the accused. However, he has not produced any documentary evidence to support the same. Further, it was easy to the complainant to produce bank statements in order to show said transaction between him and the accused on relevant date. All these aspects create doubt about the actual payment and the exact nature of the liability.

28. Further, the complainant admitted that the disputed cheque was issued as a security in relation to the agricultural land transaction. He further admitted that after completion of the transaction, the cheque was required to be returned. The admissions of the complainant shows that the sale deed was executed and consideration amount was paid to the original owner. The purpose of issuance of disputed cheque was security for transaction. Admittedly, the said transaction is over. In such circumstances, disputed cheque does not automatically become a cheque issued towards an existing enforceable debt. The complainant is under obligation to prove definite liability on the date of presentation of the cheque. In the present case, there is no independent documentary evidence showing that the accused became personally liable to repay Rs. 13,50,000/- to the complainant.

29. Further, the complainant has admitted that from 2017 till issuance of notices in 2021 and 2022, he did not issue any written demand notice to the accused. Further, he did not initiate legal proceedings against the accused for recovery of money. In these circumstances, if such a huge amount was unpaid for several years, then the complainant should have taken some legal action against the accused. However, the complainant has not issued single notice to the accused. This factors also creates doubt about contention of the complainant.

30. The complainant argued that the said land belonged to tribal persons. The sale deed was fraudulent. Disputes regarding the property are still pending. Firstly, the complainant has not disclosed these facts in his complaint. Further, the complainant has raised this point first time at his argument. The accused has not got any fair opportunity to conduct cross examination of the complainant on these newly raised points. It would not be just and proper to raise any material point at the time of final argument and keeping silence on it from inception of the case. Even though, if on independent footing the said point is assessed on merit it appears that these points mainly relate to validity of the land transaction and title of the property. Therefore, mere existence of property disputes does not automatically establish that the accused owed a legally recoverable debt of Rs. 13,50,000/- to the complainant personally.

31. The complainant has relied on ruling of *Yogendra Bhagatram Sachdev v. State of Maharashtra & Anr. 2003 STPL 3392 Bombay Court*. In which Hon'ble Bombay High Court held that if the accused despite receiving a statutory notice under Section 138 of the Negotiable Instruments Act, neither replies to the notice nor discloses any defence before trial, and even after being given an opportunity during trial declines to lead defence evidence, an adverse presumption under Sections 118 and 139 NI Act can validly operate against him. In view of this ruling if facts and evidence of present case assessed then it shows that the accused has raised a probable defence during cross examination of the complainant. Further, non-reply to the statutory notice does not mean that the defence raised during cross-examination cannot be considered. When the accused didn’t reply to the demand notice then the accused can still rebut the presumption through cross-examination of the complainant. Accordingly, in present case the accused has rebutted presumptions raised against him.

32. Further, the accused has relied on ruling of ***N. Vijay Kumar v. Viswanath Rao N. 2025 ALL MR (Cri) 3254 (S.C.)*** in which The Hon’ble Supreme Court held that once the accused raises a probable defence, the burden shifts back to the complainant to prove the legally enforceable debt. As per aforesaid discussion, the accused has successfully rebutted presumption raised against him through probable defence. As per ruling supra, the burden has shifted back on the complainant. However, the complainant has not adduced reliable evidence to prove legally enforceable debt.

33. Furthermore, Sections 118 and 139 of the Negotiable Instruments Act, a presumption initially arises in favour of the complainant that the cheque was issued towards discharge of liability. However, the accused can rebut this presumption by showing probable defence through cross-examination and surrounding circumstances. In the present case, the admissions of the complainant regarding execution of sale deed, absence of written agreement, lack of receipts, non-production of bank records and admission that the cheque was issued as security, are sufficient to create a probable defence and rebut the statutory presumption. Therefore, on the basis of the evidence and admissions on record, serious doubt arises as to whether there existed a legally enforceable debt or liability against the accused on the date of presentation of the cheque. The complainant has failed to produce clear and convincing documentary evidence showing that the accused was legally bound to repay Rs. 13,50,000/-. Therefore, the existence of legally enforceable debt is not satisfactorily proved. Hence, Point No.1 is answered in **the negative**.

<u>As to Point No.2</u> :-

34. Point No. 2 is related to dishonor of the cheque.

35. The complainant has relied on ruling of MSR Leathers v. S. Palaniappan & Anr. AIR 2014 SC 642 in which Hon'ble Supreme Court of India held that a cheque can be presented multiple times during its validity period, and each dishonour gives rise to a fresh cause of action under Section 138 of the Negotiable Instruments Act, provided the statutory requirements are fulfilled each time. In present case, the complainant has deposited cheque twice, firstly on 16/11/2021 and again on 02/02/2022. However, the accused has not raised any objection regarding the same. In view of ruling supra, the complainant can present cheque multiple times during its validity period.

36. It is argued on behalf of the accused that the complainant has failed to prove last return memo. Perusal of record shows that the complainant contended that he the complainant deposited said cheque in Union Bank of India, Satana branch. On 22/11/2021 the said cheque dishonored for insufficient funds. A return memo (Exh.24) was issued accordingly. On 01/02/2022, following the accused's instruction, the complainant re-deposited the cheque. On 02/02/2022, it dishonored again for insufficient funds. The complainant has not proved return memo dated 02/02/2022. Section 146 Of NI Act presumes the fact of dishonour of cheque upon production of bank's slip or memo having the official mark denoting that the cheque in question has been dishonoured. This is also a rebuttable presumption and upon production of such bank memo, the burden shifts upon accused to disprove the same. In the instant case, the complainant has not produced bank's slip or memo dated 02/02/2022 having the official mark of dishonor of cheque. Therefore, presumption has not been raised in favour of complainant by virtue of Section 146 of **NI Act.** Consequently, the burden has not shifted upon the accused to rebut this presumption by establishing some reasonable justification for the same. Resultantly, the point no.2 is answered in the **negative**.

As to Point No. 3 and 4:-

37. Point No. 3 and 4 are related to issuance of the notice and receipts of the notice. Therefore, these two points are interrelated. Hence, they are taken together for consideration.

38. As per settled provision of the N.I. Act, it is not only sufficed to prove that the cheque was issued for legally enforceable debt and same was dishonored. However, it is incumbent upon the complainant to prove that he had issued notice and despite receipt of the notice the accused failed to pay the amount mentioned therein. In present case, according to the complainant he had issued the demand notice vide Exh. 25 to the accused on 17.12.2021. It is alleged that the cheque at Exh.23 was dishonored on 22.11.2021. Further, the complainant redeposited cheque for encashment. It was allegedly dishonored on 02/02/2022. However, the complainant has not proved fact of dishonor of said cheque again on 02/02/2022. Further, the complainant issued demand notice (Exh.28) again on 28/02/2022. The said notice was duly served on 07/03/2022. Hence, the notice appears to have been issued within 30 days as contemplated in the proviso (b) to Section 138 of the N.I. Act. Further, the accused has not contested the service of demand notice (Exh.25 and 28) on him. Moreover, postal acknowledgement at Exh.30 transpires that the demand notice at Exh.28 was duly served on the accused. Therefore, its concluded that the demand notices were issued and it was duly served on the accused. Hence, I answer point No. 3 and 4 in the **affirmative**.

As to Point No.5 and 6:-

39. Point no.5 and 6 are interlinked hence in order to avoid repetition discussion, they are taken together for discussion.

40. Considering the discussion of Point no.3 and 4 shows that the complainant has succeeded issuance of demand notice. However, discussion of Point No. 1 and 2 transpires that the complainant has failed to prove that the accused was liable to pay sum of Rs.

13,50,000/- and dishonor of cheque. Consequently, the accused deserves to be acquitted. Therefore, I answer to point No.5 in Negative and accordingly, in answer to point no.6 I pass the following order:

- O R D E R –

1. Accused **Dattu Bhika Shelar** acquitted for the offence punishable under section 138 of the Negotiable Instrument Act 1881 vide section 255 (1) of Code of Criminal Procedure 1973.
2. Bail bond of accused is canceled.
3. Accused is directed to furnish surety of Rs. 15,000/- and personal bond of like amount, as per section 437-A of Code of Criminal Procedure, 1973.

(Judgment Pronounced in open Court)

MADHUSUDAN DINKAR MAHADIK

Digitally signed by MADHUSUDAN DINKAR MAHADIK
Date: 2026.06.11 16:51:17 +0530

Satana
Date: 11-06-2026

(Madhusudan Dinkar Mahadik)
Judicial Magistrate First Class,
Satana, Nashik.

……………………………………………………………………………………………

CERTIFICATE

I affirm that the contents of this P. D.F. file Order are same, word to word, as per the original Order.

Name of Jr. Clerk	: R. A. Bhaskar
Court	: J.M.F.C. Satana (Court No.3)
Date	: 11.06.2026
Order signed by the Presiding Officer on	: 11.06.2026
Order uploaded on	: 11.06.2026

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